WASHINGTON STATE UNIVERSITY

General Terms and Conditions

DEFINITIONS

As used throughout this Contract, including these General Terms and Conditions, the following terms shall have the meaning set forth below:

"**Contract**" means purchase order and/or the entire written agreement between WSU and the Contractor, including any Exhibits, documents, and materials incorporated by reference.

"**The Contractor**" means that firm, provider, organization, individual or other entity providing goods and/or performing service(s) under this Contract, and shall include all employees, assigns, successors in interest and authorized agents of the Contractor.

"**Debarment**" means an action taken by a Federal official to exclude a person or business entity from participating in transaction involving certain federal funds.

"**Improper influence**" means any influence that induces or tends to induce a WSU employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

"**Materials**" means all information in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, software, digital file, computer programs, films, tapes, and sound reproductions.

"**Ownership**" includes the right to copyright, patent, and register, and the ability to transfer, these rights.

"**Party**" or "**Parties**" Party, when capitalized, shall mean an individual generic reference to the Contractor or WSU. Parties, when capitalized, shall mean both the Contractor and WSU.

"**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, other identifying numbers, and any financial identifiers.

"**RCW**" means the Revised Code of Washington. All reference in this Contract to RCW chapters or sections shall include any successor, or replacement statute.

""**Law**" means any federal, state, local or WSU regulation, law, rule, or ordinance.

"**Special Terms and Conditions**" means terms and conditions other than these General Terms and Conditions.

"**Subcontract**" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.

"**Subcontractor**" means one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

"**WSU**" means WASHINGTON STATE UNIVERSITY, any division, section, office, unit, campus or other entity of WASHINGTON STATE UNIVERSITY, or any of the officers or other officials lawfully representing WASHINGTON STATE UNIVERSITY.

1. **ADVANCE PAYMENTS PROHIBITED** – No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by WSU, except as authorized by law.

2. **AMENDMENTS** – This Contract may only be amended by the mutual written agreement of the Parties. No material alterations in any of the terms, conditions, delivery, price, quality, quantity, or specifications shall be effective unless the alteration is expressly acknowledged and accepted in writing by an authorized person at WSU.

3. **ANTITRUST ASSIGNMENTS** – The Contractor hereby assigns to WSU any and all claims for price fixing or overcharges relating to goods, products, services and/or materials purchased under this Contract, except as to overcharges that result from antitrust violations commencing after the price is established under this Contract and that are not passed on to WSU under an escalation clause.

4. **ASSIGNMENT** – The work to be provided under this Contract, and any claim arising there under, is not assignable or delegable by the Contractor without prior written consent by WSU. Provision of monies due under this Contract shall only be assignable with prior written permission of WSU.

5. **ATTORNEYS' FEES** – In the event of litigation or other action brought to enforce the Contract terms; each party shall bear its own attorneys' fees and costs.

6. **BREACH, DEFAULT, TERMINATION**

   A. Breach: A breach of a term or condition of this Contract shall mean any one or more of the following events:
      (1) The Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to this Contract signed by WSU;
      (2) The Contractor breaches any warranty or fails to perform or comply with any term or provision in this Contract;
      (3) The Contractor makes any general assignment for the benefit of creditors;
      (4) In WSU's sole opinion, the Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
      (5) The Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors;
      (6) Any receiver, trustee, or similar official is appointed for the Contractor or any of the Contractor's property;
      (7) The Contractor is determined to be in violation of any rules or Laws and that such determination, in WSU's sole opinion, renders the Contractor unable to perform any aspect of this Contract.

   B. Default: The Contractor may be declared in default for a material breach of any term or condition.

   C. Termination for Convenience: WSU may terminate this Contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to the Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both Parties. Where termination charges are applicable, both Parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by the Contractor prior to date of termination. Should the Parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

D. Termination for Breach and/or Default: Except in the case of delay or failure to perform resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, WSU shall be entitled, by written or oral notice, to cancel and/or terminate this Contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against the Contractor by reason of the Contractor's breach as provided by Law.

E. 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 normal completion, WSU may terminate this Agreement under the "Termination for Convenience" clause without advance notice, subject to renegotiation under those new funding limitations and conditions.

F. Termination by Mutual Agreement: WSU or the Contractor may terminate this Contract in whole or in part, at any time, by mutual written agreement signed by authorized persons.

7. **COMPLIANCE WITH APPLICABLE LAW** – At all times during the term of this Contract, the Contractor shall comply with all Laws, including but not limited to, nondiscrimination laws, anti-kickback laws, fraudulent claims law and export controls.

8. **CONFIDENTIALITY** – The Contractor may use Personal Information and any other information gained by reason of this Contract only for the purpose of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any third party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains. The Contractor shall maintain the confidentiality of all confidential information gained by reason of this Contract, and shall return or certify the destruction of such information if requested in writing by WSU.

9. **CONFLICT OF INTEREST** – Notwithstanding any determination by the Executive Ethics Board or other tribunal, WSU may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by WSU that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the Contractor in the procurement of this Contract, or the provision of goods or services under this Contract.

   If this Contract is terminated as provided above, WSU 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 WSU provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

10. **COPYRIGHT AND INTELLECTUAL PROPERTY PROVISIONS** – Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by WSU. WSU shall be considered the author of such Materials. If the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to WSU effective from the moment of creation of such Materials.

    For Materials that are delivered under this Contract, but that incorporate pre-existing materials not produced under this Contract, the Contractor grants to WSU a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to WSU.

    WSU shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any Materials delivered under this Contract. WSU shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

11. **COVENANT AGAINST CONTINGENT FEES** – The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents, as defined in the FAR Subpart 3.4, maintained by the Contractor for the purpose of securing business. WSU shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

12. **DEBARMENT CERTIFICATION** – The Contractor, by accepting the terms of this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions. The Contractor shall include the above mentioned requirement in any and all subcontracts into which it enters. In the event that the Contractor becomes debarred, suspended or ineligible from participating in transactions, the Contractor shall notify WSU in writing within three working days of such an event.

13. **DELIVERY AND ACCEPTANCE** – Delivery shall be accomplished by the date and time in the order, and noncompliance may be construed as grounds for termination for cause for failure to deliver on time. Partial delivery will not be construed as acceptance of goods, including failure to deliver related software, materials or documentation. Unless otherwise provided in writing, WSU shall have ninety (90) days after delivery to accept software and equipment.

14. **DELIVERY RESTRICTIONS** – Parking on campus sidewalks, grounds, or roadways is strictly prohibited.

15. **FORCE MAJEURE** – Neither the Contractor nor WSU shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or WSU. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSU acting in either its sovereign or contractual capacity, war, acts of terrorism, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or other force majeure; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, WSU, or their respective Subcontractors.

16. **GOVERNING LAW** – This Contract shall be 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 Whitman County.

17. **INDEMNIFICATION** – The Contractor shall indemnify, defend, and hold WSU, the Board of Regents of WASHINGTON STATE UNIVERSITY, and their officers, employees, students and agents, harmless from and against all claims for damages, costs (including attorney's fees), or liability, relating to the death or injury to any persons or the damage of any property resulting from or arising out of the acts or omissions of the Contractor or its employees, agents, or subcontractors in connection with this Contract. The Contractor expressly agrees to indemnify, defend, and hold harmless WSU for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform this Contract. The Contractor shall be required to indemnify, defend and hold harmless WSU only to the extent claim is caused in whole or in part by negligent acts or omissions of the Contractor.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify WSU, the Board of Regents of WASHINGTON STATE UNIVERSITY, and their officers, employees, students and agents as provided herein.

18. **INDEPENDENT CONTRACTOR** – The Parties intend that an independent contractor relationship is created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of WSU. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of WSU or of the State of Washington during the term of this Contract, or act as attorney in fact, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee. Conduct and control of the work will be solely with the Contractor.

19. **INFRINGEMENTS** – The Contractor agrees to defend, indemnify and hold harmless WSU against all claims for patent, copyright, or franchising infringements arising from the purchase, installation, or use of software, documentation, material or product ordered on this Contract, and to assume all expense and damage arising from such claims.

20. **INSPECTION** – In addition to any rights of access or inspection that may be included in any Special Terms and Conditions, the Contractor shall provide reasonable access to the Contractor's place of business, the Contractor records, and client records, to WSU and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the Contractor's performance and compliance with applicable Laws, and these Contract terms during the term of this Contract and for one (1) year following termination or expiration of this Contract, six (6) years in relation to all records maintained per Records Maintenance clause of this Contract.

21. **LIENS, CLAIMS AND ENCUMBRANCES** – The Contractor warrants and represents that all software, documentation, materials, equipment or services delivered under this Contract are free and clear of all liens, claims, or encumbrances of any kind.

22. **LIMITATION OF LIABILITY** – WSU shall not be liable to the Contractor or to any Subcontractor, regardless of the form of action, for any consequential, incidental, indirect, special or punitive damages, or for any claim or demand based on a Date Compliance issue, release of information, or patent, copyright, or other intellectual property right infringement. This section does not modify any specific agreement regarding liquidated damages or any other conditions as are elsewhere expressly agreed to between the Parties.

23. **NO DISCRIMINATION** - There will be no discrimination in the performance of this Contract on the basis of race, religion, creed, color, national origin, sex, marital status, sexual orientation (including gender identity), age, genetic history, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability, or any other protected status, in compliance with applicable state and federal law.

24. **ORDER IDENTIFICATION** – All invoices, packing lists, packages, shipping notices, and other written documentation affecting any goods delivered under this Contract shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Contract indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received. Shipments received without order numbers may be refused, at the Contractor's expense.

25. **ORDER OF PRECEDENCE** – In the event of any inconsistencies or conflicting terms and conditions in this Contract, such inconsistency or conflict shall be resolved by giving precedence in the following order: federal, state, or local laws or Laws, WSU Special Terms and Conditions, WSU General Terms and Conditions; the Contractor's terms proposed are rejected, unless otherwise provided in writing by WSU's Purchasing Department.

26. **PACKING** – No charges will be allowed for special handling, packing, wrapping, bags, containers, reels, etc. unless otherwise provided herein.

27. **PAYMENT, CASH DISCOUNT** – WSU shall not process invoices for payment, and the period of computation for cash discount will not commence, until WSU receives a properly completed invoice or receives and accepts invoiced items, whichever is later. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. If WSU fails to make a timely payment, vendor may invoice for a minimum of $1 or maximum of 1% per month on the amount overdue (RCW 39.76.011). Payment shall not be considered late if a check or warrant is available or mailed within the time specified, or, if no terms are specified, within 30 days from date of receipt of a properly completed invoice or goods, whichever is later. WSU shall not honor drafts nor accept goods on a sight draft basis.

28. **PROPRIETARY INFORMATION** – Supplier should clearly identify any material such as, but not restricted to, valuable formulae, design, drawing, and research data claimed to be exempt from public records request, as allowable by law (RCW 42.56.270), along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary and are subject to public record. WSU will give notice to the supplier of any request for disclosure of such information. Failure to so label such materials or to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the submitting supplier of any claim that such materials are, in fact, exempt.

29. **PUBLICITY** – The Contractor agrees to submit to WSU for prior approval, all advertising and publicity matters relating to this Contract wherein WSU'S name is mentioned or language used from which the connection of WSU'S name may, in the WSU'S judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of WSU.

30. **RECORD MAINTENANCE** – The Contractor shall maintain, at no additional cost, all records and other materials relevant to this Contract for a period of six (6) years following the date of termination or expiration of this Contract. At no additional cost, these records shall be subject at all reasonable times to inspection, review or audit by WSU, personnel duly authorized by WSU, the Office of the State Auditor, and any federal and state officials so authorized by Law or this Contract. 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.

31. **REJECTION** – All goods or materials purchased under this Contract are subject to approval by WSU. Any rejection of goods or material resulting from nonconformity to the terms, conditions, or specifications of this Contract, whether held by WSU or returned, will be at the Contractor's risk and expense.

32. **RIGHTS AND REMEDIES** – Failure of WSU to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of WSU to insist upon the strict performance of this Contract.

33. **SEVERABILITY** – If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this Contract.

34. **SHIPPING INSTRUCTIONS** – Unless otherwise instructed, all goods procured under this contract are to be shipped prepaid, FOB Destination, as defined in RCW Title 62A. Where specific authorization is granted to ship goods FOB Shipping Point, the Contractor agrees to prepay all shipping charges, to route via the cheapest common carrier, and to bill WSU as a separate item on the invoice for the charges. WSU reserves the right to refuse COD shipments. Regardless of FOB point, the Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered pursuant to this Contract that occurs prior to delivery to WSU, and such loss, injury, or destruction shall not release the Contractor from any obligation hereunder.

35. **SUBCONTRACTING** – Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval of WSU.

36. **TAXES** – All payments accrued on account of property taxes, payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

    Where required by state statute or Law, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, WSU agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and WSU agrees to furnish the Contractor with an exemption certificate where appropriate.

    The Contractor shall calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

37. **TERMINATION PROCEDURES** – After receipt of a notice of termination, and except as otherwise directed by WSU, the Contractor shall:

    A. Stop work under this Contract on the date, and to the extent specified, in the notice;
    B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
    C. Assign to WSU, in the manner, at the times, and to the extent directed by WSU, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case WSU has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
    D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of WSU to the extent WSU may require, which approval or ratification shall be final for all the purposes of this clause;
    E. Transfer title to WSU and deliver in the manner, at the times, and to the extent directed by WSU any property which, if this Contract had been completed, would have been required to be furnished to WSU;
    F. Complete performance of such part of the work as shall not have been terminated by WSU; and
    G. Take such action as may be necessary, or as WSU 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 WSU has or may acquire an interest.

    WSU shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services or goods accepted by WSU. WSU may withhold from any amounts due the Contractor a sum that WSU determines to be necessary to protect WSU against potential loss or liability.

    The rights and remedies of WSU 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.

38. **TREATMENT OF ASSETS**

    A. Title to all property furnished by WSU shall remain in WSU. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in WSU upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in WSU upon (1) issuance for use of such property in the performance of this Contract, or (2) commencement of use of such property in the performance of this Contract, or (3) reimbursement of the cost thereof by WSU in whole or in part, whichever first occurs.
    B. Any property of WSU furnished to the Contractor shall, unless otherwise provided herein or approved by WSU, be used only for the performance of this Contract.
    C. The Contractor shall be responsible for any loss or damage to property of WSU that result from the negligence or misconduct of the Contractor or from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
    D. If any WSU property is lost, destroyed or damaged, the Contractor shall immediately notify WSU and shall take all reasonable steps to protect the property from further damage.
    E. The Contractor shall surrender to WSU all property of WSU before settlement upon completion, termination or cancellation of this Contract.

39. **WARRANTY**

    A. Product: The Contractor warrants all goods, products and services delivered under this order conform to specifications set forth in this Contract and any request for proposal upon which this Contract is based, shall be free from defects in material and workmanship, and shall be fit for the intended purpose. All goods, software, documentation, materials, products and services found defective shall be replaced upon notification by WSU. All costs of replacement, including shipping charges, shall be borne by the Contractor.
    B. Price: The Contractor warrants that prices of software, documentation, materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
    C. Financial Status: The Contractor warrants that at the time of the commencement of its performance under this Contract, it has not commenced bankruptcy proceedings and that there are no judgments, liens or encumbrances of any kind affecting title to any goods that are the subject of this Contract.