

Attachment A

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this Contract, the following terms have the following meanings:

Agency means the Washington State Department of Agriculture, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.

Confidential Information means information identified as confidential or exempt from public disclosure. The term also includes Personal Information regardless of whether such information has been identified as confidential or exempt from disclosure.

Contract Manager means the representative identified in the Special Terms & Conditions of the Contract who is delegated the authority and responsibility to administer the Contract.

Contractor means the firm, provider, organization, individual or other entity performing service(s) under this contract, and includes all employees of the Contractor. Contractor is synonymous with "Subrecipient."

Director means the Agency's Director or any delegate authorized to act on the Director's behalf.

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 or Protected Health Information as defined by the federal Health Insurance Portability and Accountability Act Pub. L. No. 104-191, § 264, 110 Stat. 1936, any financial identifiers, and other information that may be exempt from public disclosure or other unauthorized persons under state and federal statutes.

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" mean Subcontractor(s) in any tier.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such award. As it refers to this contract, subrecipient is synonymous with "Contractor," see above definition.

ACCESS TO DATA

In compliance with chapter 39.26 RCW, the Contractor must provide access to data generated under this Contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

Contractor must not request payments in advance of or in anticipation of goods or services to be provided under this Contract.

AMENDMENTS

The parties may amend this Contract by mutual agreement. Such amendments are not binding unless in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336 ("ADA") 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

The Contractor must not transfer or assign this contract, or any claim arising under this contract, without prior written consent of the Agency.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party bears its own attorney fees and costs.

CALCULATION OF TIME

Unless otherwise specified, a time period prescribed in this Contract is in calendar days, begins to run the day after the date of the triggering act or event, and ends at 5:00 p.m. on the last day of the period. When the last day is a Saturday, Sunday, or legal holiday, the period of time ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may terminate this Contract for cause and without notice of need to take corrective action if the Agency finds that the Contractor is involved in a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute in connection with the procurement of or performance under this Contract. The Agency must provide the Contractor notice and an opportunity to respond to allegations prior to termination.

CONFIDENTIALITY/SAFEGUARDING INFORMATION

The Contractor must not use or disclose any information concerning the Agency for any purpose not directly connected with the administration of this Contract, except with prior written consent of the Agency or as may be required by law.

The Contractor must not release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons, including anyone not directly employed by Contractor, Confidential Information without the express written consent of the Agency or as otherwise required by law. The Contractor must protect Confidential Information, collected, used, or acquired in connection with this Contract against unauthorized use, disclosure, modification or loss. The Contractor must ensure its directors, officers, employees, subcontractors or agents use Confidential Information solely for the purposes of accomplishing the services set forth by this Contract.

Immediately upon expiration or termination of this Contract, Contractor will destroy all Confidential Information not required to be retained by professional standards.

Any breach of this provision may result in termination of the Contract and the demand for return of all Confidential Information. The Contractor indemnifies and holds harmless the Agency for any damages related to the Contractor's unauthorized use of Confidential Information.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this Contract are "works for hire," as defined by the U.S. Copyright Act, and owned by the Agency. The Agency is considered the author of such materials. To the extent the materials are not "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all materials, including all intellectual property rights, to the Agency effective from the moment of creation of such materials.

Materials in this provision means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Data includes, but is not limited to, all information that supports the findings, conclusions, and recommendations of the Contractor's reports, data extracts, reports or information provided by the Agency. Ownership includes, but is not limited to, the right to use, copyright, patent, register and the ability to transfer these rights.

For materials delivered under the Contract that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to publish, translate, reproduce, deliver, 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 the Agency.

The Contractor must exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.

The Contractor must provide the Agency with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Agency has the right to modify or remove any restrictive markings placed upon the data by the Contractor.

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 commercial or selling agents maintained by the Contractor for the purpose of securing business. In the event of Contractor's breach of this clause, the Agency has the right to annul this Contract without liability. In lieu of annulling the Contract, the Agency may deduct the full amount of such commission, percentage, brokerage or contingent fee from the Contract price or consideration.

CUMULATIVE RIGHTS AND REMEDIES

The rights and remedies of the Agency provided for in this Contract are cumulative and not exclusive. The exercise of any right or remedy does not preclude the exercise of any other rights or remedies is available at law, regardless of whether the right or remedy is available at the time of Contract execution.

DES FILING REQUIREMENT

The provisions of Chapter 39.26 RCW require the agency to file any sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.

DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties' Contract Managers that cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director.

The request for a dispute hearing must:

1. Be in writing;
2. State the disputed issue(s);
3. State the relative positions of the parties;
4. State the Contractor's name, address, and Contract Number; and
5. Be mailed to the Director and the other party's (respondent's) representative within 3 days after the parties agree that they cannot resolve the dispute.

The respondent must send a written answer to the requester's statement to the Director and the requester within 5 days. The Director must review the written statements and reply in writing to both parties within 10 days. The Director may extend this period by notifying the parties.

This dispute process precedes any action in a judicial or quasi-judicial tribunal. Nothing in this Contract limits the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

Contractor must not charge the Agency for services and expenses that Contractor has charged or will charge to the State of Washington or any other party under any other contract or agreement. The Agency is not liable for payment of such charges.

ELECTRONIC SIGNATURES & RECORDS

An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.

EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS

As previously certified in Contractor's bid, quotation and/or proposal submission, Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that during the term of this Contract, Contractor will not require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers as a condition of employment.

FORCE MAJEURE

Except for the obligation to pay amounts when due under this Contract, neither party will be liable to the other for damages due to a failure to carry out its obligations under this Contract when that failure is in whole or part caused by fire, hurricane, flood, earthquake, lightning, or other natural event or disaster, including an epidemic or pandemic; freight embargo; governmental or administrative prohibition; riot; strike (other than at the affected party's operations or that of its suppliers); acts of public enemies or terrorists; sabotage; or other events beyond that party's reasonable control (a "force majeure event"). A party affected by a force majeure event immediately shall notify the other, describing the event and estimating its duration. The parties shall cooperate in good faith to mitigate the effects of the force majeure event; provided, however, that, if Contractor is unable to perform in a timely fashion, the Agency may purchase replacement Goods or obtain substitute Services from another vendor without penalty, and those replacement Goods and substitute Services shall count towards any volume requirements in this Contract. Alternatively, Agency may elect to terminate the Contract.

GOVERNING LAW AND VENUE

This Contract must be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought in connection with this Contract is proper only in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, the Contractor must indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees, from and against all claims for injuries or deaths arising out of or resulting from the performance of this Contract. "Claim," as used in this Contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting thereby.

The Contractor's obligations to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless the State is not eliminated or reduced by any actual or alleged concurrent negligence of State and its agencies, officials, agents, or employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents, or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend this Contract to create an independent contractor relationship. The Contractor and its employees or agents performing under this Contract are not employees or agents of the Agency. The Contractor will not hold itself out as, nor claim to be, an officer or employee of the Agency or of the State of Washington by reason of this Contract, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Contractor is solely responsible for conduct and control of the work.

INDUSTRIAL INSURANCE COVERAGE

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, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION, AND REGISTRATION

The Contractor must comply with all applicable local, state, and federal licensing and accrediting requirements / standards, necessary in the performance of this Contract.

LIMITATION OF SIGNATURE AUTHORITY

Neither the Agency nor the Contractor will be liable to the other for special, consequential, indirect, or incidental damages, including without limitation lost profits, business opportunities or goodwill, as a result of its performance or nonperformance of this contract. The Agency's liability arising from this agreement shall not exceed the total amount of fees paid by the Agency to the Contractor under this agreement.

NONDISCRIMINATION

- a. Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- b. Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- c. Default. Notwithstanding any provision to the contrary, Agency may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Agency may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- d. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference

between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.

OVERPAYMENTS AND ASSERTION OF LIEN

Contractor must refund to Agency any amount of overpayment or erroneous payment. The Agency may secure repayment, plus interest, by the filing of a lien against the Contractor's real property or by requiring Contractor to post a bond, assignment of deposit, or some other form of security acceptable to the Agency.

PROPRIETARY INFORMATION

The Agency is subject to chapter 42.56 RCW, the Public Records Act. This Contract and any documents Contractor submits to the Agency under this Contract is a public record as defined in RCW 42.56. If the Contractor submits any information to the Agency that the Contractor claims to be confidential or proprietary, Contractor must clearly identify the information as such. To the extent consistent with chapter 42.56 RCW, the Agency will maintain the confidentiality of all such information marked confidential or proprietary. If the scope of a request made pursuant to RCW 42.56 includes the Contractor's proprietary or confidential information and the Agency intends to release the information, the Agency will notify the Contractor of the request and the date the records will be released to the requester. If Contractor desires to prevent disclosure, Contractor must obtain a court order enjoining disclosure. If the Contractor fails to obtain such court order, the Agency will release the requested information.

PUBLICITY

The Contractor must submit to the Agency all advertising and publicity matters relating to this Contract in which the Agency's identity is named, inferred, or implied. The Contractor must not publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECAPTURE

If the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, the Agency reserves the right to recapture funds in an amount to compensate the Agency for the noncompliance.

RECORDS, DOCUMENTS, AND REPORTS

The Contractor must maintain books, records, documents and other evidence relating to this Contract and performance of the services described by this Contract, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under the Contract, are subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Agency, the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor is responsible for any audit exceptions or disallowed costs incurred by the Contractor or any of its Subcontractors.

The Contractor must retain all books, records, documents, and other materials relevant to this Contract for six years following the date of final payment. If additional litigation, claim or audit is started before the expiration of the six (6) year period, the Contractor must retain all records until all litigation, claims, or audit findings involving the records are resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor must comply with the Washington State law requiring registration with the Department of Revenue.

SEVERABILITY

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

SITE SECURITY

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

SUBCONTRACTS

The Contractor must not enter into subcontracts for any of the work contemplated under this Contract without prior written approval of the Agency. Contractor must prohibit Subcontractors from further subcontracting without prior written approval of the Agency. The existence of the subcontract does not operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

The Contractor must ensure that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

SURVIVAL

The terms, conditions, and warranties in this Contract that by their sense and context are intended to survive beyond performance, survive the expiration, cancellation, or termination of this Contract.

TAXES

The Contractor is solely responsible for payment of all taxes due on payments under this Contract. The Contractor is solely responsible for all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor.

TERMINATION OR SUSPENSION FOR CONVENIENCE

Either party may terminate or suspend this Contract for convenience, in whole or part, upon 10 days written notice. If this Contract is so terminated, the Agency is liable only for payments required under the terms of this Contract for services rendered or goods provided prior to the effective date of termination.

TERMINATION OR SUSPENSION FOR CAUSE

If the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency must notify the Contractor in writing of the need to take corrective action, unless such notice of corrective action is otherwise excused by this Contract. The Agency may suspend all or part of the Contract or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach or the time Contractor takes for corrective action. If the Contractor does not take required corrective action within 30 days, the Agency may immediately, or upon a date determined by the Agency, terminate the Contract. If so terminated, the termination is deemed a "Termination for Convenience" if the Agency determines that failure to perform was outside the control of the Contractor and the Contractor is not otherwise in default, at fault, or negligent. In the event of termination or suspension for cause, the Contractor is liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

TERMINATION OR SUSPENSION FOR LOSS OF FUNDING OR GOVERNMENT SHUTDOWN

If funding from any source is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Agency may immediately terminate or suspend the Contract without advance notice. In lieu of termination or suspension, the parties may amend the Agreement to reflect the new funding limitations and conditions. If temporary federal or state government shutdowns occur for any reason, the Agency may suspend this Contract or delay payments due under it without advance notice.

TERMINATION PROCEDURE

Upon termination of this Contract, the Contractor must deliver to the Agency any property specifically produced or acquired for the performance of this Contract in accordance with the Treatment of Assets provision.

The Agency must pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency and the amount agreed upon by the Contractor and the Agency for the following:

1. Completed work and services for which no separate price is stated;
2. Partially completed work and services;
3. Other property or services which are accepted by the Agency; and
4. The protection and preservation of property, unless the termination is for cause, in which case the Director will determine the extent of the liability. The Agency may withhold from any amounts due the Contractor such sum as the Director determines to be necessary to protect the Agency against potential loss or liability.

After receipt of a notice of termination, and except as otherwise directed by the Agency's Contract Manager, the Contractor must:

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

TREATMENT OF ASSETS

Title to all property furnished by the Agency remains in the Agency. Title to all property purchased by the Contractor the cost of which the Contractor has been reimbursed as a direct item of cost under this Contract, passes to and vests in the Agency upon delivery of such property by the Contractor. The title passes to the Contractor only if the Agency specifically agrees to grant title in this Contract for asset(s) purchased. Contractor must use any property furnished by the Agency only for the performance of this Contract, unless otherwise provided by this Contract or approved by the Agency in writing.

Contractor must return property to the Agency in same condition as when it was furnished to the Contractor, normal wear and tear excepted. The Contractor is responsible for any loss or damage to property of the Agency that results from the Contractor's negligence or the Contractor's failure to maintain the property in accordance with sound management practices.

If any Agency property is lost, damaged or destroyed, the Contractor must notify the Agency and take all reasonable steps to protect that property from further damage.

The Contractor must surrender to the Agency all property of the Agency upon completion, termination or cancellation of this Contract.

All reference to the Contractor under this clause includes any employees, agents or Subcontractors.

U. S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

The Agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>. Compliance with OFAC payment rules ensures that the Agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the Agency will download the current OFAC SDN file and compare it to Agency and statewide vendor files. In the event of a positive match, the Agency reserves the right to: 1) make a determination of "reasonability" before taking the positive match to a higher authority, 2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, 3) comply with an OFAC investigation, if required, and/or 4) if the positive match is substantiated, notify the Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. The Agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER

Failure to insist on strict performance by either party does not constitute a waiver of the other party's obligations. Waiver of any right must be in writing and signed by an authorized representative of the party waiving the right.