



**STATE OF WASHINGTON
WASHINGTON STATE PATROL**

GENERAL TERMS AND CONDITIONS

1. Definitions.

"Contract" means Good and Service Contract, including all documents attached or incorporated by reference.

"Vendor" means the entity performing services to this Contract and includes the Vendor's owners, members, officers, director, partners, employees or agents unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Vendor" includes any Subcontractor and its owners, members, officers, director, partners, employees or agents.

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

"RCW" means the Revised Code of Washington. All references in the Contract to RCW chapters or sections shall include any successor, amended or replacement statutes.

"USC" means United States Code. All references in the Contract to USC chapters or sections shall include any successor, amended or replacement statutes.

"WSP" means the State of Washington, Washington State Patrol, and its officers, directors, trustees, employees or agents.

- 2. Payment.** WSP shall reimburse the Vendor an amount not to exceed the Maximum Contract Amount specified on the Face Sheet of this Contract. Payment will be made by the WSP or political subdivision indicated on ordering document. Any contract that requires payment in less than thirty (30) calendar days need not be considered. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Vendor has been attained. 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. Under "Chapter 39.76 RCW," if WSP fails to make timely payment(s), Vendor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Vendor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Vendor.
- <https://www.ofm.wa.gov/it-systems/statewide-vendorpayee-services>

- 3. Billing Procedure.** WSP shall reimburse the Vendor according terms & Conditions of contract. Compensation for services rendered and goods procured shall be payable upon receipt of properly completed invoices. The invoices shall include WSP's contract

number. The Vendor shall submit the final invoice not later than 60 calendar days from the Contract End Date.

4. **Advance Payments Prohibited.** WSP shall not make any payments in advance or anticipation of the delivery of goods or services provided by the Vendor pursuant to this Contract.
5. **Assignment.** The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by the Vendor in whole or in part, without the express written consent of WSP.
6. **Attorneys' Fees and Costs.** If any litigation is brought to enforce any term, clause, provision, or section of this Contract or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorney's fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels as well as subsequent to judgment in obtaining execution thereof. In the event that parties to this Contract engage in arbitration, mediation, or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution, including the cost of mediation or arbitration services. Each party shall be responsible for their own attorney's fees incurred as a result of the alternative dispute resolution method.
7. **Compliance with Civil Rights Laws.** During the period of performance for this Contract, the Vendor shall comply with all federal and state nondiscrimination laws.
8. **Confidentiality.** The Vendor shall not use or disclose any information concerning WSP, or information that may be classified as confidential, to any third party without the written permission of WSP. The Vendor shall destroy or return all such information to the WSP at the end of this Contract.
9. **Conflict.** These Terms and WSP's contract Terms, shall take precedence over any other documents incorporated by reference
10. **Contract Execution and Amendments.** This Contract shall be binding on WSP only upon signature by the Chief of WSP or designee. WSP and the Vendor may mutually amend this Contract. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind WSP and the Vendor.
11. **Vendor Certification Regarding Ethics.** The Vendor certifies that the Vendor is in compliance with Chapter 42.52 RCW, Ethics in Public Service, and will comply with Chapter 42.52 RCW throughout the term of the Contract.
12. **Disputes.** In the event a bona fide dispute concerning a question of fact arises between WSP and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response.

- a. If after this review resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member.

Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.

- b. The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- d. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- e. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- f. WSP and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- g. If the subject of the dispute is the amount due and payable by WSP for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided WSP pays Vendor the amount WSP, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

13. Governing Law. This Contract shall be governed in all respects by the laws of the State of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, State of Washington.

14. Indemnification. The Vendor shall indemnify, defend, and hold harmless WSP from and against all claims arising out of or resulting from the performance of this Contract. The Vendor expressly agrees to indemnify, defend, and hold harmless WSP for any claim arising out of or incident to the Vendor's performance or failure to perform this Contract. The Vendor shall be required to indemnify, defend, and hold WSP harmless to the extent claim is caused in whole or in part by negligent acts or omissions of the Vendor.

15. Independent Capacity. The Vendor acknowledges that the Vendor is an independent Vendor, and not an officer, employee or agent of WSP or the State of Washington. The Vendor shall not hold itself out as, nor claim status as, an officer, employee, or agent of WSP or the State of Washington. The Vendor shall indemnify and hold WSP harmless from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Vendor or the Vendor's employees unless otherwise specified in this Contract.

16. Industrial Insurance Coverage. Prior to performing work under this Contract, the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the period of performance for this Contract. WSP shall not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Agreement.

17. Insurance. The Vendor shall provide insurance coverage. The intent of the required insurance is to protect the State of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Vendor or any Subcontractor, or agents of either, while performing under the terms of this Contract.

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good or service may be detailed elsewhere in a solicitation or its Appendices.

General Requirements. Vendor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, Vendor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation. Vendor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the WSP.

Specific Requirements. Employers Liability (Stop Gap): The Vendor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The WSP will not be held responsible in any way for claims filed by the Vendor or its employees for services performed under the terms of this contract.

Commercial General Liability Insurance: The Vendor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Vendor or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness, and death, and property damage arising out of the Vendor's premises or operations, independent Vendors, products or completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions. Vendor waives all rights against the WSP for the recovery of damages to the extent they are covered by general liability or umbrella insurance. The limits of liability insurance shall not be less than as follows:

General aggregate limits (other than products-completed operations)	\$2,000,000
Products-completed operations aggregate	\$2,000,000
Personal and advertising injury aggregate	\$1,000,000
Each occurrence (applies to all of the above)	\$1,000,000
Fire damage limit (per occurrence)	\$50,000
Medical expense limit (any one person)	\$5,000

Surplus Lines. For insurers subject to [Chapter 48.15 RCW](#) (Surplus Lines) a written notice shall be given to the WSP 20 calendar days before cancellation or any material change to the policy(ies) as it relates to this contract. Written notice shall include the affected contract reference number.

Cancellation for Non-payment of Premium. If cancellation on any policy is due to non-payment of premium, a written notice shall be given to the Chief of the WSP or designee

ten (10) calendar days before cancellation. Written notice shall include the affected contract reference number.

Identification. Policy(ies) and certificates of insurance shall include the affected contract reference number.

Insurance Carrier Rating. The insurance required above shall be issued by an insurance company authorized to do business within the WSP. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the WSP, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with [Chapter 48.15 RCW](#) and [Chapter 284-15 WAC](#) .

Excess Coverage. The limits of all insurance required to be provided by the Vendor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Vendor from liability in excess of such limits.

Limit Adjustments. The WSP reserves the right to increase or decrease limits as appropriate.

- 18. Inspection; Maintenance of Records.** During the term of this Contract and for one year following termination or expiration of this Contract, the Vendor shall give reasonable access to the Vendor's place of business and records to WSP and any other employee or agent of the State of Washington or the United States of America for the purpose of inspecting the Vendor's place of business and its records, and monitoring, auditing and evaluating the Vendor's performance and compliance with applicable laws, regulations, rules and this Contract.

During the term of this Contract and for six years following termination or expiration of this Contract, the Vendor shall maintain records sufficient to document (i) performance of all acts required by statute, regulation, rule, or this Contract; (ii) substantiate the Vendor's statement of its organization's structure, tax status, capabilities and performance; and (iii) demonstrate accounting procedures, practices and records that sufficiently and properly document the Vendor's invoices to WSP and all expenditures made by the Vendor to perform as required by this Contract.

- 19. Order of Precedence.** In the event of any inconsistency in the terms of this Contract, or between its terms and any applicable statute or rule the inconsistency shall be resolved by giving precedence in the following order to:

Applicable federal and state law, regulations and rules;
Any other provision of this Contract; and
Any document incorporated by reference.

- 20. Overpayments to Vendors.** Vendor shall refund to WSP the full amount of any erroneous payment or overpayment under this contract within 30 days' written notice. If Vendor fails to make timely refund, WSP may charge Vendor one (1%) percent per month on the amount due, until paid in full.

- 21. Personnel.** WSP employees performing work under the terms of this Contract (if any) shall be under the direct command and control of the Chief of WSP or designee, and

shall perform duties required under this Contract in a manner consistent with WSP policy and regulations, and applicable federal, state and local laws. The assignment of WSP personnel under this Contract shall be at the discretion of the Chief of WSP or designee.

- 22. Rights in Data.** Unless otherwise provided, data that originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by WSP. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, or sound reproductions. Ownership includes the right to copyrights, patent, register, and the ability to transfer these rights.

Material delivered by the Vendor under the terms of this Contract, but which does not originate therefrom, shall be transferred with a nonexclusive, royalty-free irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, provided that such a license shall be limited to the extent which the Vendor has a right to grant such a license. The Vendor shall exert all reasonable efforts to advise WSP at the time of material delivery of all known or potential invasions of privacy contained therein and of any portion of such material which was not produced in performance of this Contract. WSP shall receive prompt written notice of each notice or claim of copyright infringement received by the Vendor with respect to any material delivered under this Contract. WSP shall have the right to modify or remove any restrictive markings placed upon the data by the Vendor.

Patent and Copyright Indemnification. The Vendor, at its expense, shall defend, indemnify, and hold WSP harmless from and against any claims against WSP that any Product or Work Product supplied hereunder, or WSP's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. (Product shall mean any Vendor-supplied equipment, software, and documentation). The Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages, and attorneys' fees awarded by a court or incurred by WSP provided that WSP:

- a. Promptly notifies the Vendor in writing of the claim, but WSP's failure to provide timely notice shall only relieve the Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to the Vendor; and Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant the Vendor sole control of the defense and all related settlement negotiations.
- b. If such claim has occurred, or in the Vendor's opinion is likely to occur, WSP agrees to permit the Vendor, at its option and expense, either to procure for WSP the right to continue using the Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, the Vendor, at its risk and expense, will take back the Product or Work Product and provide WSP a refund. In the case of Work Product, the Vendor shall refund to WSP the entire amount WSP paid to the Vendor for the Vendor's provision of the Work Product. In the case of Product, the Vendor shall refund to WSP its depreciated value. No termination charges will be payable on such returned Product, and WSP will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the

Product has been installed less than one (1) year, all costs associated with the initial installation paid by WSP shall be refunded by the Vendor.

- c. The Vendor has no liability for any claim of infringement arising solely from:
 - 1. The Vendor's compliance with any designs, specifications or instructions of WSP;
 - 2. Modification of the Product or Work Product by WSP or a third party without the prior WSP knowledge and approval of the Vendor; or
 - 3. Use of the Product or Work Product in a way not specified by the Vendor; unless the claim arose against the Vendor's Product or Work Product independent of any of these specified actions.
- d. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

23. Savings. In the event that funds WSP relied upon to establish this Contract are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding WSP may immediately terminate this Contract by providing written notice to the Vendor. This termination shall be effective on the date specified in the notice of termination.

24. Severability. If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Contract, and to this end the provisions of this Contract are declared to be severable.

25. Site Security. While on WSP's premises, the Vendor shall conform in all respects with physical, fire, or other security regulations communicated to the Vendor by WSP.

26. Statewide Vendor Payment Registration. The Vendor is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under this Contract. The Washington State Office of Financial Management (OFM) maintains the Statewide Vendor Payment System; to obtain registration materials go to <http://www.ofm.wa.gov/default.asp>.

27. Subcontracting. Except as otherwise provided in this Contract, the Vendor may subcontract for any of the services provided under this Contract with the prior, written approval of WSP. The Vendor shall be responsible for the acts and omissions of any Subcontractor.

28. Survivorship of Provisions. Any terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive performance by the parties to this Contract shall so survive the completion of the period of performance or termination of this Contract.

29. Taxes. WSP shall pay sales and use taxes imposed on services provided by the Vendor under this Contract if required by state law. The Vendor shall pay all other taxes, including, but not limited to, Washington State Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which WSP does not own title. Vendor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with [WAC 458-20-247](#).

30. Termination for Convenience. Except as otherwise provided in this Contract, WSP may terminate this Contract upon thirty (30) calendar days written notification. If this

Contract is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Contract for performance rendered prior to the effective date of termination.

- 31. Termination for Default.** WSP may terminate the Contract for default, in whole or in part, if WSP has a reasonable basis to believe that the Vendor failed to perform under any provision of this Contract; violated any applicable law, regulation, rule or ordinance; or otherwise breached any provision or condition of this Contract.

WSP shall notify the Vendor in writing of the need to take corrective action. If corrective action is not taken within five (5) calendar days, the Contract may be terminated. WSP reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Vendor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Vendor or a decision by WSP to terminate the Contract.

In the event of termination for default, the Vendor 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 cover contract, and all administrative costs directly related to procuring the replacement contract. If it is determined that the Vendor was not in default the termination shall be deemed a termination for convenience. The rights and remedies of WSP provided under this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

- 32. Termination Procedure.** The following provisions shall survive and be binding on the parties to this Contract in the event this Contract is terminated.

- a. The Vendor shall stop work under this Contract on the date specified in the notice of termination, and shall comply with all instructions contained in the notice of termination.
- b. The Vendor shall deliver to the WSP, all WSP property in the Vendor's possession and any WSP property produced under this Contract. The Vendor grants WSP the right to enter upon the Vendor's premises for the sole purpose of recovering any WSP property that the Vendor fails to return within ten (10) calendar days of termination of the Contract. Upon failure to return WSP property within ten (10) calendar days of the Contract termination, the Vendor shall be charged with all reasonable costs of recovery, including transportation and attorney's fees. The Vendor shall protect and preserve any property of WSP that is in the possession of the Vendor pending return to WSP. The Vendor shall provide written certification to WSP that the Vendor has returned all WSP property in the Vendor's possession.
- c. WSP may direct assignment of the Vendor's rights to and interest in any subcontract or orders placed to WSP. WSP may terminate any subcontract or orders, and settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- d. WSP shall be liable for and shall pay for only those services authorized and provided through the date of termination. WSP may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to WSP.
- e. In the event of termination for default, WSP may withhold a sum from the final payment to the Vendor that WSP determines necessary to protect WSP against loss or additional liability.

- 33. Treatment of Assets.** Title to all property furnished by WSP to the Vendor under the terms of this Contract shall remain with WSP. Any property furnished by WSP to the Vendor under the terms of this Contract shall be used only for the performance of this Contract. The Vendor shall be responsible for any loss or damage of property provided

to the Vendor by WSP resulting from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices. Upon the discovery of loss or damage of WSP property, the Vendor shall notify WSP and take all reasonable steps to prevent any further loss or damage. Upon the termination or completion of this Contract, the Vendor shall surrender all WSP property to the WSP Project Manager indicated on the Face Sheet of this Contract.

- 34. Waiver.** A failure by WSP to exercise its rights under this Contract shall not preclude WSP from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract unless stated to be such in writing and signed by an authorized representative of WSP and attached to the original Contract.
- 35. Delivery Requirements.** Vendor must ensure that delivery of goods will be made as required in the contract terms or as otherwise mutually agreed in writing between the WSP and Vendor.

The Following Apply To All Deliveries. The Vendor must deliver the goods during WSP's normal work hours and within contract time frames or as otherwise mutually agreed in writing between the WSP and Vendor at the time of order placement. The Vendor must verify specific working hours of the WSP and instruct carrier(s) to deliver accordingly. The WSP may refuse shipment when delivered after normal working hours. Failure to comply with agreed upon delivery times may subject Vendor to liquidated damages or other damages. The acceptance of late delivery does not constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor.

The Vendor must make all deliveries to the applicable delivery location as indicated in the contract or as otherwise directed by the WSP. The Vendor is responsible for verifying delivery conditions or requirements with the WSP before the delivery. When applicable, the Vendor must take all necessary actions to safeguard items during inclement weather. All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this contract shall be identified by the contract identifier and the applicable WSP's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders. The Vendor must not initiate performance prior to receipt of written or verbal authorization from authorized WSPs. Expenses incurred otherwise will be borne solely by the Vendor.

Receipt of Goods. Inspection and rejection: The WSP's inspection of all materials, supplies, and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered, and are ready for acceptance. If applicable, the WSP or state reserves the right to independently test, at Vendor's expense, any product of questionable freshness, quality, or origin delivered against this contract. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the WSP will promptly notify the Vendor.

At the WSP's option and without limiting any other rights, the WSP may require the Vendor to:

- a. repair or replace, at Vendor's expense, any or all of the damaged goods;
- b. refund the price of any or all of the damaged goods;
- c. accept the return of any or all of the damaged goods; or

- d. at the WSP's option, any possible damage to the product may be noted on the receiving report and the cost deducted from final payment.

Acceptance. Acceptance shall be as specified in the contract. In the event that there is a formal acceptance testing period required in the contract document then acceptance is formalized in writing. If there is no acceptance testing period required, acceptance occurs when the products are delivered and inspected.

- 36. Shipping and Risk of Loss.** Unless the contract specifies otherwise, Vendor shall ship all Goods freight prepaid, FOB WSP's destination. The method of shipment shall be consistent with the nature of the Goods and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Goods ordered hereunder that occurs before the Delivery Date or Acceptance, whichever is applicable, except loss or damage attributable to WSP's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After Delivery Date or Acceptance, whichever is applicable, the risk of loss or damage shall be borne by WSP, except loss or damage attributable to Vendor's fault or negligence.
- 37. Installation.** When applicable, installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. The WSP or state reserves the right to require Vendor to repair any damage caused during installation or provide full compensation as determined by the state.
- 38. Title to Product (if applicable).** Upon Delivery or Acceptance, whichever is applicable, Vendor shall convey to WSP good title to the Goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.
- 39. Vendor Commitments, Warranties and Representations.** Any written commitment by Vendor within the scope of this contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this contract. For purposes of this section, a commitment by Vendor includes:
 - a. prices, discounts, and options committed to remain in force over a specified period of time; and
 - b. any warranty or representation made by Vendor in its quote or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its quote or used to effect the sale to WSP.
- 40. Warranties.** Vendor warrants that all materials, supplies, services or equipment provided under this contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service, or equipment, and inspection incidental thereto, by the WSP shall not alter or affect the obligations of the Vendor or the rights of the WSP.
- 41. Date Warranty.** Vendor warrants that all products provided under this contract:
 - a. do not have a life expectancy limited by date or time format;
 - b. will correctly record, store, process, and present calendar dates;
 - c. will lose no functionality, data integrity, or performance with respect to any date
 - d. will be interoperable with other software used by WSP that may deliver date records from the products, or interact with date records of the products ("Date Warranty"). In

the event a Date Warranty problem is reported to Vendor by WSP and such problem remains unresolved after three calendar days, at WSP's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to WSP's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on WSP's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless WSP from and against any and all harm, injury, damages, costs, and expenses incurred by WSP arising out of said breach.

- 42. Cost of Remedy.** Cost of remedying defects: All defects, indirect and consequential costs of correcting, Removing, or replacing any or all of the defective materials or equipment will be charged against the Vendor.
- 43. Proprietary or Confidential Information.** To the extent consistent with Chapter 42.56 RCW, the Public Records Act, WSP shall maintain the confidentiality of Vendor's information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, WSP will notify Vendor of the request and of the date that the records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, WSP will release the requested information on the date specified. The WSP's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Vendor of any request(s) for disclosure for so long as WSP retains Vendor's information in WSP records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Vendor of any claim that such materials are exempt from disclosure.
- 44. Limitation of Liability.** The parties agree that neither Vendor, nor WSP shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent ,copyright, or other intellectual property right infringement, in which case liability shall be asset forth elsewhere in this contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section. The parties are not liable for damages arising from causes beyond their reasonable control and without their fault or negligence. Such causes may include, but are not restricted to, acts of the public enemy, acts of a governmental body other than the WSP acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, WSP, or their respective Subcontractors. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.
- 45. Federal funding.** (if applicable) In the event that a federally funded acquisition results from this procurement, the Vendor may be required to provide additional information (free

of charge) at the request of WSP. Further, the Vendor may be subject to those federal requirements specific to the commodity.

- 46. Federal restrictions on lobbying.** (if applicable) Vendor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 47. Federal debarment and suspension.** (if applicable) The Vendor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.