

**UNIVERSITY OF WASHINGTON
GENERAL TERMS AND CONDITIONS**

1. **DEFINITIONS** – As used throughout this Contract, the following terms shall have the meaning set forth below:

“Contract” means purchase order and/or the entire written agreement between the UW 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 of the Contractor.

“Date Compliance” means compliance, as outlined in clause 39.C of these General Terms and Conditions, with any processing of date and date related data.

“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 UW 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, computer programs, films, tapes, and sound reproductions.

“Ownership” includes the right to copyright, patent, and register, and the ability to transfer, these rights.

“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.

“Regulation” means any federal, state, local or the UW regulation, law, rule, or ordinance.

“Special Terms and Conditions” means terms and conditions other than 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.

“The UW” means the University of Washington, any division, section, office, unit or other entity of the University of Washington, or any of the officers or other officials lawfully representing the University of Washington.

2. **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 the UW, except as authorized by law.

3. **AMENDMENTS** – This Contract may be amended by mutual 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 the UW.

4. **ANTITRUST ASSIGNMENTS** – The Contractor hereby assigns to the UW 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 the UW under an escalation clause.

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

6. ATTORNEYS' FEES – In the event of litigation or other action brought to enforce contract terms, each party shall bear its own attorney's fees and costs.

7. 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 the UW; (2) the Contractor breaches any warranty or fails to perform or comply with any term or agreement in this Contract; (3) the Contractor makes any general assignment for the benefit of creditors; (4) in the UW'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 regulations and that such determination, in the UW'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: The UW 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 resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the UW 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. Termination Due to Change in Funding: If the funds the UW relied upon to establish this Contract are withdrawn, reduced or limited, or if additional or modified conditions are placed on funding by the entity funding the UW, the UW may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.

F. Termination by Mutual Agreement: The UW or the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

8. COMPLIANCE WITH APPLICABLE LAW – At all times during the term of this Contract, the Contractor shall comply with all regulations, including but not limited to, nondiscrimination laws and regulations.

9. 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 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 the UW.

10. CONFLICT OF INTEREST – Notwithstanding any determination by the Executive Ethics Board or other tribunal, the UW may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the UW 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, the UW 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 the UW provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

11. 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 the UW. The UW 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 the UW 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 the UW 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 the UW.

The UW 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. The UW shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

12. 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. The UW 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.

13. DATA SECURITY – If, during the course of the performance, administration, or maintenance of this contract, or any extension or renewal thereof, Contractor acquires, uses, or otherwise obtains access to 'University Data' or 'Confidential Data' as those terms are defined in the UW's Data Security Addendum, a copy of which is available at <http://www.washington.edu/admin/purchstores/docs/security.pdf> and is incorporated herein, then the UW and Contractor agree that all of the terms and conditions of the UW's Data Security Addendum shall apply.

14. 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 the UW in writing within three working days of an event.

15. DELIVERY – Delivery shall be accomplished by the date and time in the order, noncompliance may be construed as grounds for termination for cause for failure to deliver on time.

16. DELIVERY RESTRICTIONS – Parking on campus sidewalks, grounds, or roadways is strictly prohibited. Unmarked delivery vehicles MUST stop at a gatehouse for parking permit. Others may stop at a campus gatehouse for directions to the nearest load zone or load dock. If delivery will take more than 30 minutes, call 206-685-1543.

17. FORCE MAJEURE – Neither the Contractor nor the UW shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or the UW. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the UW 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 Contractor, the UW, or their respective Subcontractors.

18. 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 King County.

19. INDEMNIFICATION – The Contractor shall indemnify, defend, and hold the UW, the Board of Regents of the University of Washington, 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 the UW 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 the UW 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 the UW, the Board of Regents of the University of Washington, and their officers, employees, students and agents as provided herein.

20. 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 the UW. 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 the UW or of the State of Washington by reason hereof, 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.

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

22. INSPECTION – In addition to any rights of access or inspection that may be included in the Special Terms and Conditions, the Contractor shall provide reasonable access to the Contractor's place of business, the Contractor records, and client records, to the UW 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 regulations, 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.

23. LIENS, CLAIMS AND ENCUMBRANCES – The Contractor warrants and represents that all materials, equipment or services delivered herein are free and clear of all liens, claims, or encumbrances of any kind.

24. LIMITATION OF LIABILITY – The UW shall not be liable to the Contractor or to any Subcontractor, regardless of the form of action, for any consequential, incidental, indirect, or special 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.

25. 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.

26. 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 regulations, the UW special terms and conditions, the UW general terms and conditions; the Contractor's terms proposed are rejected, unless otherwise provided in writing by the UW's Purchasing Department.

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

28. PAYMENT, CASH DISCOUNT – The UW shall not process invoices for payment, and the period of computation for cash discount will not commence, until the UW 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 Purchaser 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. The UW shall not honor drafts nor accept goods on a sight draft basis.

29. PUBLICITY – The Contractor shall submit to the UW all advertising and publicity matters relating to this Contract in which the UW's name is specifically mentioned or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the UW.

30. 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. The UW 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.

31. 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 the UW, personnel duly authorized by the UW, the Office of the State Auditor, and any federal and state officials so authorized by regulation 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.

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

33. RIGHTS AND REMEDIES – Failure of the UW 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 the state to insist upon the strict performance of this Contract.

34. 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.

35. SHIPPING INSTRUCTIONS – Unless otherwise instructed, all goods 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 cheapest common carrier, and to bill the UW as a separate item on the invoice for the charges. The UW 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 herein that occur prior to delivery, and such loss, injury, or destruction shall not release the Contractor from any obligation hereunder.

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

37. 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 regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the UW 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 the UW 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.

38. TERMINATION PROCEDURES – After receipt of a notice of termination, and except as otherwise directed by the UW, 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 the UW, in the manner, at the times, and to the extent directed by the UW, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the UW 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 the UW to the extent the UW may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the UW and deliver in the manner, at the times, and to the extent directed by the UW any property which, if this Contract had been completed, would have been required to be furnished to the UW;
- F. Complete performance of such part of the work as shall not have been terminated by the UW; and
- G. Take such action as may be necessary, or as the UW 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 UW has or may acquire an interest.

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

The rights and remedies of the UW 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.

39. TREATMENT OF ASSETS

- A. Title to all property furnished by the UW shall remain in the UW. 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 the UW 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 the UW 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 the UW in whole or in part, whichever first occurs.
- B. Any property of the UW furnished to the Contractor shall, unless otherwise provided herein or approved by the UW, be used only for the performance of this Contract.
- C. The Contractor shall be responsible for any loss or damage to property of the UW that results from the negligence 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 UW property is lost, destroyed or damaged, the Contractor shall immediately notify the UW and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the UW all property of the UW before settlement upon completion, termination or cancellation of this Contract.

40. WARRANTY

- A. **Product:** The Contractor warrants all goods, products and services delivered under this order conform to specifications herein, shall be free from defects in material and workmanship, and shall be fit for the intended purpose. All goods, products and services found defective shall be replaced upon notification by the UW. All costs of replacement, including shipping charges, shall be borne by the Contractor.
- B. **Price:** The Contractor warrants that prices of 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. **Date Compliance:** The Contractor warrants fault free performance in the processing of date and date related data including, but not limited to calculation, comparing, and sequencing by all Equipment and Software provided pursuant to this Contract, individually and in combination, when used in accordance with the product documentation provided by the Contractor. Fault free performance shall include the manipulation of this data when dates are in the 20th or 21st centuries and shall be transparent to the user.
- D. **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.