

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**--As used throughout this contract, the following terms shall have the meaning set forth below:
 - a. **"Department"** shall mean the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
 - b. **"The Adjutant General"** as it is used herein shall mean the Director of the Washington Military Department. The term **"Authorized Department Representative"** shall mean those persons who have written authorization to sign Department contracts and represent Department as signed and directed by The Adjutant General.
 - c. **"Contractor"** shall mean that firm, organization, group, individual, or other entity performing services under this contract, and shall include all employees of the Contractor. It shall include any subcontractor retained by the prime Contractor as permitted under the terms of this agreement.
 - d. **"Subcontractor"** shall mean one, not in the employment of the Contractor, who is performing all or part of those services under this contract through a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
 - e. **"WAC"** is defined and used herein to mean the Washington Administrative Code.
 - f. **"RCW"** is defined and used herein to mean the Revised Code of Washington.

2. **CONTRACTOR NOT EMPLOYEE OF AGENCY** -- The Contractor, and/or employees or agents performing under this agreement are not employees or agents of the Department in any manner whatsoever. The Contractor will not be presented as nor claim to be an officer or employee of the Department or of the State of Washington by reason hereof, nor will the Contractor make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the Department or of the State of Washington, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW; OFM Reg. 4.3.1.1.8.

It is understood that if the Contractor is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right.

If the Contractor is an individual currently employed by a Washington State agency, the Department shall obtain proper approval from the employing agency or institution before entering into this contract. A statement of "no conflict of interest" shall be submitted to the Department.

3. **COMPLIANCE WITH APPLICABLE LAW** – The Contractor and all subcontractors shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, tribal government, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 C.F.R. Sec. 52.203-5); Public Records Act (RCW 42.56); and safety and health regulations.

In the event of the Contractor's or a subcontractor's noncompliance or refusal to comply with any law or policy, the Department may rescind, cancel, or terminate the contract in whole or in part. The Contractor is responsible for any and all costs or liability arising from the Contractor's failure to comply with applicable law.

4. **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, EMD 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 WMD 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), WMD 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, WMD 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 WMD 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), WMD 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.
5. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES** -- In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). To the extent possible, the Contractor will solicit and encourage minority-owned and women-owned business enterprises who are certified by the OMWBE under the state of Washington certification program to apply and compete for work under this contract. Voluntary numerical MWBE participation goals have been established, and are indicated herein: Minority Business Enterprises: (MBE's): 10% and Women's Business Enterprises (WBE's): 6%.
6. **SUBCONTRACTING** -- All subcontracts entered into pursuant to this contract shall incorporate this contract in full by reference. Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract and after original contract award, without obtaining prior written approval of the Department. Contractor shall use a competitive process in award of any contracts with subcontractors that are entered into after original contract award. The Military Department may request a copy of any and/or all subcontracts that exist for work being completed under this contract. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Department 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.

7. **INDEMNIFICATION** -- To the fullest extent permitted by the law, the Contractor expressly agrees to and shall indemnify, defend and hold harmless the State and its agencies, officials, agents and employees from and against all claims, actions, costs, damages, or expenses of any nature 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 also includes any claim by the Contractor's agents, employees, representatives or any

subcontractor or its employees. The Contractor's obligation to defend includes payment of any costs or attorneys' fees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The Contractor expressly agrees to waive its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend, and hold harmless the State and its agencies, officials, agents or employees.

8. **COVENANT AGAINST CONTINGENT FEES** -- The Contractor warrants that no person or selling agency 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 agency maintained by the Contractor for the purpose of securing business.

The Department shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability, in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

9. **NONASSIGNABILITY** -- Neither this contract, nor any claim arising under this contract, nor the work to be provided under this contract, and any claim arising thereunder, shall be assigned or delegated by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
10. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336**, 42 U.S.C. 12101 et seq. and its implementing regulations, 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 telecommunication.
11. **CLEAN AIR AND WATER REQUIREMENTS** -- Contractor will comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q) Federal Water Pollution Contract Act (33 U.S.C. 1251-1387), and standards, orders or regulations issued under those acts.
12. **BYRD AMENDMENT ANTI-LOBBYING REQUIREMENTS** -- Contractor must submit to Customer certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 1352, as implemented by the DoD (NGB) at 32 CFR part 28.
13. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OF EQUIPMENT** -- Per 2 CFR 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018).
14. **RECORDS, MONITORING AND AUDIT ACCESS**
 - a. The Contractor shall perform under the terms of the contract, and the Department has responsibility for reasonable and necessary monitoring of the Contractor's performance. The Department shall conduct contract monitoring activities on a regular basis. Monitoring means any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. Monitoring involves prudent collection of information about Contractor operations and is not limited to site visits or the completion of formal reviews. Monitoring may include periodic contractor reporting to the Department, Department review of audit reports, invoice reviews, onsite reviews and observations, and surveys. Adequate documentation is essential for effective contract monitoring and will include copies of letters, meeting notes, and records of phone

conversations as evidence that conscientious monitoring has occurred during the period of the contract.

- b. The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Department, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six (6) years from the date contract final payment is made hereunder, and make them available for inspection by persons authorized under this provision.
- c. The Department or the State Auditor or any of their representatives and federal officials so authorized by law, rule, regulation, or contract shall have full access to and the right to examine during normal business hours and as often as the Department or the State Auditor may deem necessary, all of the Contractor's records with respect to all matters covered in this contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this contract. Such rights last for six (6) years from the date final payment is made hereunder.
- d. The Contractor shall cooperate with and freely participate in any other monitoring or evaluation activities conducted by the Department that are pertinent to the intent of this contract.

15. ACCESS TO PUBLIC RECORDS

- a. The parties acknowledge that the Department is subject to the Public Records Act, Chapter 42.56 RCW, and that records prepared, owned, used or retained by the Department relating to the conduct of government or the performance of any governmental or proprietary function are available for public inspection or copying, except as exempt under RCW 42.56 or other statute which exempts or prohibits disclosure of specific information or records.
- b. The Contractor shall provide access to data generated under this contract to the Department 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.
- c. Access to Data. The contractor shall provide access to all data generated under the contract to the Department, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. For the purposes of this requirement, "data" includes all information that supports the findings, conclusions and recommendations of the contractor's reports, including computer models and methodology for those models.

- 16. DISCLOSURE** -- The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by prior written consent of the Department or as required to comply with the Public Records Act or court order.

Contractor acknowledges that the Department is subject to Chapter 42.56 RCW, the Public Records Act, and that this Contract shall be a public record as defined in RCW 42.56.0.10. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with Chapter 42.56 RCW, the Department shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Department will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Department will release the requested information on the date specified.

17. **RIGHTS IN DATA** – The parties hereto agree that all works originating from this contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the Department and/or the State of Washington. Unless otherwise provided, this contractual term applies to all works including, but not limited to, reports, graphic design and logos, documents, files, pamphlets, advertisements, publications, books, magazines, surveys, studies, computer programs, films, tapes, and or/sound reproductions prepared by an employee within the scope of the employment, and also to all works specially ordered or commissioned for use as a contribution to a collective work, as part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas.

Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. Work delivered under the contract, but which does not originate therefrom, shall be transferred to the Department 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 license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise the Department, at the time of delivery of works furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The Department shall receive prompt written notice of each notice or claim, or copyright infringement received by the Contractor with respect to any works created under this contract.

The contractor shall not affix any restrictive markings upon any works, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such markings.

18. **PUBLICITY** -- The Contractor agrees to submit to the Department all advertising and publicity matters relating to this contract wherein the Department’s name is mentioned or language used from which the connection of the Department’s name may, in the Department’s judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department.
19. **PRIVACY** -- Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Department or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through this contract. The monitoring, auditing or investigating may include but is not limited to “salting” by the Department. Contractor shall certify return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Department for any damages related to the Contractor’s unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person’s health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

20. TREATMENT OF ASSETS

- a. Title to all property furnished by the Department shall remain with the Department. Title to all property purchased 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 Department upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Department upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
 - b. Any property of the Department furnished to the Contractor shall, unless otherwise provided herein, or approved by the Department, be used only for the performance of this contract.
 - c. The Contractor shall be responsible for any loss or damage to property of the Department that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
 - d. Upon the happening of loss or destruction of, or damage to, any Department property, the Contractor shall notify the Department thereof and shall take all reasonable steps to protect that property from further damage.
 - e. The Contractor shall surrender to the Department all property of the Department prior to settlement upon completion, termination, or cancellation of this agreement.
 - f. All reference to the Contractor under this clause shall include any of the Contractor's employees or agents or subcontractors.
21. **SITE SECURITY** – While on Department premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.
22. **ATTORNEY'S FEES** – In the event of litigation or other action brought to enforce contract terms or alternate dispute resolution process, each party agrees to bear its own attorney's fees and costs.
23. **TAXES** – All payments accrued on account of 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.
24. **TRAVEL AND SUBSISTENCE REIMBURSEMENT** -- Unless the contract specifically provides for different rates, any travel or subsistence reimbursement expressly authorized under the contract shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 and the State Administrative and Accounting Manual (SAAM) Chapter 10.90 – Travel Rates, <http://www.ofm.wa.gov/policy/10.90.htm> as now existing or amended. Receipts and documentation for travel or subsistence expenses that are authorized under this contract must be maintained by the Contractor and be made available to the Department upon request.
25. **LICENSING AND ACCREDITATION STANDARDS** -- Unless exempt from registration by law, the Contractor shall complete registration with the Department of Revenue, and be responsible for payment of all taxes due on payments made under this Contract. WAC 458-20-101.

The Contractor shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, necessary in the performance of this contract. (See RCW 19.02 for state licensing requirements/definitions.) The Contractor shall provide to the Department all identification codes/numbers that apply to the business as required in the state and federal revenue laws and regulations.

Identifications such as the State Department of Revenue number, federal employee identification number, state certification number of a minority/women-owned business enterprise, and any other applicable registration

identification that may exist should be provided. The Contractor shall be responsible for payment of all related licensing, accreditation and other related fees and charges.

26. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY** -- If federal funds are the basis for this contract, the Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal department or agency. If requested by Washington Military Department, the Contractor shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference. Further, the Contractor agrees not to enter into any arrangements or contracts related to this contract with any party that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal department or agency. In addition, the state debarment laws shall apply: RCW 39.19.090; RCW 39.12.065 (3).
27. **ADVANCE PAYMENTS PROHIBITED** – The Department shall make no payments in advance or in anticipation of services or supplies to be provided under this contract. Contractor shall not invoice the Department in advance of delivery of such goods or services. RCW 43.88.160; Washington State Constitution, Article VIII, § 5.
28. **LOSS OR REDUCTION OF FUNDING** -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Department may immediately terminate the contract in its sole discretion under the "Termination for Convenience" clause, without the ten (10) day notice requirement. Alternatively, the parties may renegotiate the terms of this contract under the "CONTRACT MODIFICATIONS" provision to comply with new funding limitations and conditions, although the Department has no obligation to do so.
29. **WAIVER OF DEFAULT** -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the Director and attached to the original contract.
30. **CONTRACT MODIFICATIONS** – This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or bind the parties hereto unless made in writing and signed by the parties. The Department and the Contractor may, from time to time, request changes to the contract. Any such changes that are mutually agreed upon by the parties to this contract shall be incorporated herein by written amendment to this contract. It is mutually agreed and understood that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and that any other understanding or agreements, oral or otherwise, are not incorporated herein and shall not be binding unless made in writing and signed by the parties hereto.
31. **LIMITATION OF AUTHORITY** -- "Authorized Signature" Only the assigned Authorized Signature for the Department or the assigned delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the authorized person.
32. **DISPUTES** -- Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution board to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The board shall consist of a representative appointed by the Department, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The determination of the dispute resolution board shall be final and

binding on the parties hereto. Each party shall bear the cost for its member of the dispute resolution board and its attorney fees and costs, and share equally the cost of the third board member.

33. **RECAPTURE OF FUNDS** -- In the event that the Contractor fails to expend funds under this Contract in accordance with state laws and/or the provisions of this Contract, the Agency reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such right of recapture shall exist for a period not to exceed six (6) years following Contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. In the event that the Agency is required to institute legal proceedings to enforce the recapture provision, the Agency shall be entitled to its costs thereof, including reasonable attorneys' fees.

34. **CONFLICT OF INTEREST** -- The Department may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by The Adjutant General or the Authorized Department Representative that there is a violation of Chapter 42.52 RCW, Ethics in Public Service, or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

35. **TERMINATION FOR CONVENIENCE** -- Notwithstanding any other provisions of this contract, the Department may, by ten (10) days written notice, beginning on the second day after the mailing of the written notice, terminate this contract, in whole or in part. If this contract is so terminated, the Department shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the contract, withhold further payments, and prohibit the Contractor from incurring additional obligations of funds.

36. **TERMINATION OR SUSPENSION FOR CAUSE** -- In the event the Department determines the Contractor has failed to comply with the conditions of this contract in an acceptable and timely manner, the Department has the right to suspend or terminate this contract. The Department shall notify the Contractor in writing of the need to take corrective action.

If the default or violation is not corrected after ten (10) days or within a reasonable timeframe as determined by the Department, the contract shall be deemed terminated. The Department reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Department to terminate the contract.

In the event this contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Department provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which The Adjutant General or the Authorized Department Representative makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default, or (2) failure to perform was outside of the Contractor's control, fault or negligence. The rights and remedies of the Department provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

37. **TERMINATION PROCEDURE** -- Upon termination of this contract, the Department, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

The Department shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department, and the amount agreed upon by the Contractor and the Department for

(i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Department, and (iv) the protection and preservation of property; provided, that if the termination is due to default, The Adjutant General or the Authorized Department Representative shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Department may withhold from any amounts due the Contractor such sum as The Adjutant General or the Authorized Department Representative determines to be necessary to protect the Department against potential loss or liability. The rights and remedies of the Department 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.

After receipt of a notice of termination, and except as otherwise directed by the Department, the Contractor shall:

- a. Stop work under the contract on the date, and to the extent specified, in the notice; 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;
- b. Assign to the Department, in the manner, at the times, and to the extent directed by The Adjutant General or the Authorized Department Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- c. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent The Adjutant General or the Authorized Department Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- d. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the contract had been completed, would have been required to be furnished to the Department;
- e. Complete performance of such part of the work as shall not have been terminated by the Department; and
- f. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.

38. **GOVERNING LAW AND VENUE** -- This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

39. **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, and to this end the provisions of this contract are declared to be severable.

40. **DATE COMPLIANCE** – If applicable to this contract, the Contractor is responsible for ensuring that all materials and equipment installed as part of this contract shall accurately process date/time data between year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

41. **HISTORICAL AND CULTURAL ARTIFACTS** – The Contractor agrees that if historical, archaeological data, or cultural artifacts, relics or specimens are discovered during and as the result of contract activities such as construction, the Contractor shall immediately stop those specific activities and notify the local historical preservation officer,

the state's historical preservation officer at the Washington State Department of Archeology and Historic Preservation, and the Department's contact person for this contract.

42. **RESPONSIBILITIES OF THE PARTIES** -- Each party to this contract hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any negligent act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any negligent claim, act, or omission of any person, agency, firm, or corporation not a part to this contract.
43. **EXECUTIVE ORDER 18-03 -WORKERS' RIGHTS** -- The Contractor represents and warrants that the 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. The Contractor further represents and warrants that, during the term of this contract, the Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
44. **ACCESS TO CAMP MURRAY** -- Contractor and all associated sub-contractor's employees shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office. Contractor workforce must comply with all personal identity verification requirements as directed by the Department of Defense (DOD), Department of the Army (DA), National Guard Bureau (NGB) and/or local policy.
In addition to the changes otherwise authorized by the changes clause of this contract, should the Force Protection Condition (FPCON) at any individual facility or installation change, the WMD may require changes in contractor security matters or processes.
45. **CONTRACTOR TO PAY PREVAILING WAGES OR APPLICABLE FEDERAL WAGES** -- Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries (L&I). The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate. If applicable, the Contractor shall comply with all Federal Funding requirements of the Davis Bacon Act.
46. **INSURANCE REQUIREMENTS** --
INSURANCE OBLIGATION. During the Term of this Contract, Contractor shall obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be

provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

INSURANCE CARRIER RATING. Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. WMD reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

ADDITIONAL INSURED. Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the Washington Military Department (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

CERTIFICATE OF INSURANCE. Prior to execution of the Contract, Contractor shall furnish to WMD as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to WMD that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to WMD an updated or renewed certificate of insurance, satisfactory to WMD, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be delivered to WMD by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as WMD may specify in writing:

US Mail: Contracts Office
Attn: Alyssa Pearson
Washington Military Department
1 Militia Drive / MS: TA-20
Camp Murray, WA 98430-5092

Email: Contracts.Office@mil.wa.gov

Note: For Email notice, the Email Subject line must state:

Contract Insurance Certificate – Contract No. ___-_____

PRIMARY COVERAGE. Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.

SUBCONTRACTORS. Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

WAIVER OF SUBROGATION. Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.

NOTICE OF CHANGE OR CANCELLATION. There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to WMD. Failure to provide such notice, as required, shall

constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.

EXTENDED REPORTING PERIOD. If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.

47. **COMPLIANCE WITH WASHINGTON'S STATEWIDE IT POLICIES** -- Contractor shall comply with Washington's statewide information technology policies, as applicable – promulgated by Washington's Office of the Chief Information Officer (OCIO) and as hereafter amended. Such policies are located on the OCIO website at: <https://ocio.wa.gov//policies>. These policies include, but are not limited to, the following:

- a. Security Policy 141
- b. Accessibility Policy 188

Prior to final execution of the contract with a Contractor, the Contractor's application(s) will be subject to a Security Design Review performed by Washington Consolidated Technology Services to ensure compliance with OCIO Security Policies.

48. **SUBCONTRACTOR PAYMENTS REPORTING REQUIREMENTS** -- This contract is subject to compliance tracking using the State's business diversity management system, Access Equity (B2Gnow). This Contract is subject to compliance tracking using the State's business diversity management system, Access Equity (B2Gnow). Access Equity is web-based and can be accessed at the Office of Minority and Women's Business Enterprises at <https://omwbe.diversitycompliance.com/>. The Contractor and all Subcontractors shall report and confirm receipt of payments made to the Contractor and each Subcontractor through Access Equity. The Contractor may contact CONTRACTS.OFFICE@MIL.WA.GOV for technical assistance in using the Access Equity system. Information related to Contractor and Subcontractor access to and use of Access Equity will be provided to Contractor and each identified Subcontractor upon execution of this Contract. The Public Owner reserves the right to withhold payments from the Contractor for non-compliance with this section. For purposes of this section, Subcontractor means any subcontractor working on the Contract, at any tier and regardless of status as certified WMBE or Non-WMBE.

The contractor shall:

- a. Register and enter all required Subcontractor information into Access Equity no later than 15 days after the WMD creates the Contract Record.
- b. Complete the required user training (two (2) one-hour online sessions) no later than 20 days after the WMD creates the Contract Record.
- c. Report the amount and date of all payments (i) received from the WMD, and (ii) paid to Subcontractors, no later than thirty (30) days after issuance of each payment made by WMD to the Contractor, unless otherwise specified in writing by WMD, except that the Contractor shall mark as "Final" and report the final Subcontractor payment(s) into Access Equity no later than thirty (30) days after the final payment is due the Subcontractor(s) under the Contract, with all payment information entered no later than sixty (60) days after end of fiscal year.
- d. Monitor contract payments and respond promptly to any requests or instructions from WMD or system-generated messages to check or provide information in Access Equity.
- e. Coordinate with Subcontractors, or WMD when necessary, to resolve promptly any discrepancies between reported and received payments.
- f. Respond to reasonable requests from WMD for additional information to be provided electronically through Access Equity.
- g. Require each Subcontractor to: (i) register in Access Equity and complete the required user training; (ii) verify the amount and date of receipt of each payment from the Contractor or a higher tier Subcontractor, if applicable, through Access Equity; (iii) report payments made to any lower tier

Subcontractors, if any, in the same manner as specified herein; (iv) respond promptly to any requests or instructions from the Contractor or system-generated messages to check or provide information in Access Equity; and (v) coordinate with Contractor, or WMD when necessary, to resolve promptly any discrepancies between reported and received payments.