



# Eastern Washington University

**Athletic Apparel, Uniforms, Accessories and Footwear**

REQUEST FOR PROPOSALS

RFP #24-CTR-01

**Proposal Due Date: May 3, 2024**

**By 3:00 p.m. Pacific Time**

**CONTRACTOR ELIGIBILITY:** This procurement is open to those Contractors that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

# 1. INTRODUCTION

## 1.1. PURPOSE AND BACKGROUND

Eastern Washington University, hereafter referred to as "EWU", is initiating this Request for Proposals (RFP) to solicit proposals from Vendors interested in supplying Athletic Apparel, Uniforms, Accessories and Footwear.

EWU is seeking proposals from qualified companies to establish multi-year athletic footwear, uniform, accessories and apparel agreement to support EWU's Intercollegiate Athletics programs. Within this proposal, EWU has several goals as outlined in this section.

1. Establish a footwear, uniform, apparel and accessory supplier for all sponsored intercollegiate athletics programs, support personnel and support programs.
2. Have an assigned company representative servicing the needs of EWU's Intercollegiate Athletics programs including all EWU support groups, in a timely, thorough and professional manner.
3. Establish an overall branded style utilizing EWU's logos and color pallet incorporated into uniforms and apparel for teams.
4. Vendor must provide additional apparel, footwear or merchandise when EWU reaches or exceeds annual purchase volume levels.
5. Vendor must include additional on-field performance program incentives for NCAA FCS Football Playoff appearances and championships, individual and specific sport conference awards and basketball conference championship and NCAA and other postseason tournaments.
6. Vendor must provide pricing amounts for screen-printing & embroidering services.

### **Athletic Background**

In 2023-24, approximately 350 student-athletes are participating in fourteen (14) varsity sports at EWU, six (6) for men (football, basketball, tennis, cross-country, indoor & outdoor track & field) and eight (8) for women (basketball, soccer, volleyball, tennis, golf, cross-country, indoor & outdoor track & field). EWU has been an official member of NCAA Division I since the 1983-1984 academic year and member of the Big Sky Conference since 1987. The athletics department currently has an Adidas apparel agreement, and met minimum spend requirements (\$350k) on product during the most recent fiscal year (2022-23).

### **Recent Success of EWU Athletics**

#### **Football**

In 2010, EWU won the NCAA Division I FCS Football National Championship, the most recent Big Sky school to win an FCS Championship at the time of writing this. Since that time, the football team has been Big Sky Conference Champions or Co-Champions five times (2012, 2013, 2014, 2016, 2018), an NCAA Division I FCS Football National Quarterfinalist once (2014, 2021), an NCAA Division I FCS Football National Semifinalist three times (2012, 2013, 2016) and NCAA Division I FCA Football National Runner-Up (2018). Additionally, the program has had a winning record in 15 of the past 17 years. EWU also had the Walter Payton Award winner, given out annually to the best player in FCS, in Eric Barriere in 2021. EWU currently has three (3) active players in the NFL (Cooper Kupp with the Los Angeles Rams, Kendrick Bourne with the New England Patriots, and Samson Ebukam with the Indianapolis Colts).

#### **Men's Basketball**

Back-to-back Big Sky regular season champions in the 2022-23 and 2023-24 seasons. Last year's squad made it to the Second Round of the 2023 NIT Tournament defeating Washington State in the First Round game. Has produced the Most Valuable Player in the Big Sky Conference in five (5) of the last eight (8) years. Big Sky Tournament champions during the 2020-21 season and nearly pulled off an upset against the University of Kansas in the First Round of the NCAA Tournament. The most notable EWU basketball alum is Rodney Stuckey who played ten (10) years in the NBA for the Detroit Pistons and the Indiana Pacers.

**Women’s Basketball**

Fresh off of a 29-win season, the 2023-24 team was Big Sky regular season and tournament champions first the first time in school history. The women’s basketball team had a 10 win improvement from the previous campaign and set the school record for most wins in a season.

**Academics**

EWU student-athletes have had 48 consecutive quarters of at least a 3.0 or higher GPA. Have also been recipients of the Big Sky Presidents’ Cup award (which is a combination of on-field success and acadmemic success) in 2015, 2016, and most recently in 2018.

**General/Other**

Upon its completion in 2010, the installation of Red Synthetic Turf at Roos Field (named after NFL Offensive Lineman, Michael Roos) gave EWU a unique & one-of-a-kind athetic facility known as “The Inferno”. Since 2012, the facility has hosted 15 NCAA FCS Football Playoff games in addition to five conference & non-conference home contests each season.



Intercollegiate Sponsored Sports	Support / Auxiliary Programs
Men’s Basketball	Coaching staff
Women’s Basketball	Training staff
Men’s Cross Country	Other department support staff
Women’s Cross Country	Summer camps
Men’s Football	Spirit Teams (Cheer & Band)
Women’s Golf	Club Sports
Women’s Soccer	Intramural Sports
Men’s Tennis	Wheelchair Basketball
Women’s Tennis	
Men’s Indoor Track & Field	
Women’s Indoor Track & Field	
Men’s Outdoor Track & Field	
Women’s Outdoor Track & Field	
Women’s Volleyball	

***Currently the individual sportswear product brands used by EWU are as follows:***

**Football** – Squad size approximately 115, Support Staff approximately 40  
Uniforms – Adidas, 3 sets (white, black & red), replace one uniform color every year  
Travel Suits – Adidas, replace yearly  
Compression Gear – Adidas  
Sweat Pants /Hooded Sweatshirts and Shorts – Adidas  
Padded Girdles – McDavid  
Gloves – Adidas  
T-Shirts – Adidas  
Practice Pants – Adidas  
Practice Jersey's – Adidas  
Footballs – Wilson  
Coaches Clothing – Adidas  
Caps and Stocking Caps – Adidas

**Men's Basketball** – Squad size approximately 17, support staff approximately 7  
Uniforms – Adidas, 3 sets (white, black & red), replace one uniform color each year  
Shooting Shirts/Warmups – Adidas, replaced yearly  
Practice Uniforms – Adidas  
Shoes, Travel Suits, Sweat Pants, Sweat Shirts and Compression shirts – Adidas  
Coaches/Support Staff Clothing – Adidas  
Balls – Wilson

**Women's Basketball** – Squad size approximately 19, support staff approximately 6  
Uniforms – Adidas, 3 sets (white, black & red), replace one uniform color each year  
Shooting Shirts/Warmups – Adidas, replaced yearly  
Practice Uniforms – Adidas  
Shoes, Travel Suits, Sweat Pants, Sweat Shirts and Compression shirts, Headbands – Adidas  
Coaches/Support Staff Clothing – Adidas  
Balls – Wilson

**Cross-Country/Track & Field** – Squad size approximately 30 for CC & 135 for Track & Field  
Uniforms – Adidas, replace every three years  
Cold Weather Jackets – Adidas, replace every three years  
Travel Suits – Adidas, replace yearly  
Warm-up Jacket and Pants – Adidas, replace yearly  
Sweatshirts – Adidas  
Sweatpants – Adidas  
Shoes (Training, Running Flats & Spikes) – Adidas  
T-Shirts, Shorts, Practice Gear, Sports Bras, Tights, Running Shorts – Adidas  
Beanies/Gloves – Adidas

**Women's Soccer** – Squad size approximately 32, support staff approximately 5  
Uniforms – Adidas, 3 sets (white, black & red), replace one uniform color each year  
Travel Suits – Adidas, replace yearly  
Cleats & Shoes – Adidas  
Balls – Adidas  
Gloves (including goalkeeper) – Adidas  
Shin Guards – Adidas  
Pennies - Adidas  
T-Shirts, Shorts, Sports Bras, Socks, Sweatshirts, Sweatpants, Headbands – Adidas

**Volleyball** – Squad size approximately 16, support staff approximately 4  
Uniforms – Adidas, 3 sets (white, black & red), replace one uniform color each year

Travel Suits – Adidas, replace yearly  
Shoes (Court & Training) – Adidas  
T-Shirts, Shorts, Sports Bras, Sweatshirts, Sweatpants, Headbands – Adidas  
Balls – Molten

**Men’s Tennis** – Squad size approximately 10  
All Apparel & Shoes – Adidas (replaced yearly)  
Racquets, String & Balls – Wilson

**Women’s Tennis** – Squad size approximately 12  
All Apparel & Shoes – Adidas (replaced yearly)  
Racquets, String & Balls – Wilson

**Women’s Golf** – Squad size approximately 8  
All Apparel & Shoes – Adidas (replaced yearly)  
Equipment – TaylorMade & Titleist  
Balls – TaylorMade

**Spirit Teams** (Cheerleaders & Band) – Squad size approximately 30 for Cheer; 30 for Band  
T-Shirts, Shoes, Sweatpants, Pullover – Adidas

### **University Background**

Administration – One of six state-funded four-year institutions of higher education in Washington State, EWU is a regional, comprehensive university located in Cheney, Washington, with programs also offered in Bellevue, Everett and Spokane. EWU Cheney operates on a September-to-June academic year (quarter system) with a four-and-eight week summer session. Dr. Shari McMahan became the 27<sup>th</sup> president of EWU in 2022.

Campus – EWU’s 300-acre park like campus is just 17 miles from Washington’s second largest city, Spokane. However, it is a matter of minutes from more than 20 lakes, beautiful mountains and the Turnbull National Wildlife refuge; all of which offer fishing, hiking, biking, boating, wildlife watching and more.

Alumni – EWU Alumni are 116,000 strong and counting. 75% of EWU's graduates remain in Washington State. More than 87,000 alumni live and work in the state of Washington, approximately 44,000 in Spokane County.

## **1.2. OBJECTIVES AND SCOPE OF WORK**

The objective of this RFP is to identify a vendor that can provide National Name Brand Athletic Apparel, Uniforms, Accessories and Footwear to support all of EWU’s intercollegiate athletic programs.

## **1.3 MINIMUM QUALIFICATIONS**

Minimum qualifications include:

1. Licensed to do business in the State of Washington or provide a commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Contractor.
2. Have not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in in RCW 49.48.082 any provision of RCW Chapters 46.46, 49.48, or 49.52 within three (3) years prior to the date of this solicitation date.
3. Successful vendor must be able to provide a direct partnership with EWU and its brand of athletic footwear, uniforms, accessories, and apparel to all EWU athletic teams.
4. Vendor may not provide apparel or footwear that is produced in whole or in part by “sweatshop” labor as defined by the U.S. Department of Labor. EWU reserves the right to request verification.

5. Successful vendor, if required, must be able to assist EWU in the transition of apparel, equipment, or footwear if a new partner is chosen.

#### 1.4 PERIOD OF PERFORMANCE

The period of performance of any Contract resulting from this RFP is July 1, 2025 – June 30, 2030.

EWU reserves the right to extend the Contract for two (2) additional one-year (1) periods, for a total contract period not to exceed seven (7) years.

#### 1.5 DEFINITIONS

Definitions for the purposes of this RFP include:

**Apparent Successful Contractor** – The Contractor selected as the entity to perform the anticipated services, subject to completion of Contract negotiations and execution of a written Contract.

**Contractor** –

1. Individual or company interested in the RFP and that may or does submit a Proposal in order to attain a Contract with EWU.
2. Individual or company who’s Proposal has been accepted by EWU and is awarded a fully executed, written Contract.

**EWU** - The agency of the State of Washington that is issuing this RFP.

**Proposal** – A formal offer submitted in response to this solicitation.

**Proposer** - Individual or company that submits a Proposal in order to attain a Contract with EWU.

**Request for Proposal (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the Contractor community to suggest various approaches to meet the need at a given price.

#### 1.6 ADA

EWU complies with the Americans with Disabilities Act (ADA). Contractors may contact the RFP Coordinator to receive this RFP in Braille or on tape.

## 2. GENERAL INFORMATION FOR CONTRACTORS

### 2.1. RFP COORDINATOR

The RFP Coordinator is the sole point of contact in EWU for this solicitation. All communication between the Contractor and EWU upon release of this RFP shall be with the RFP Coordinator, as follows:

Name	Cody Ross
Email Address	<a href="mailto:cross19@ewu.edu">cross19@ewu.edu</a>
Mailing Address	EWU Procurement & Contracts 218 Tawanka Hall Cheney, WA 99004
Phone Number	(509) 359-6804
Fax Number	(509) 359-7984

Email is the preferred method of communication.

**Any other communication will be considered unofficial and non-binding on EWU. Contractors are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Contractor.**

**2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES**

Issue RFP	March 29, 2024
Questions due in writing to	April 17, 2024 by 3:00 PM PST
Q&A Response Addendum to vendors	April 24, 2024 by 3:00 PM PST
Proposal Due Date	May 3, 2024 by 3:00 PM PST
Evaluate Proposals	May 6 – May 31, 2024
Conduct Oral Interviews with Finalists, if required	June 3-7, 2024
Announce “Apparent Successful Contractor” and Send Notification to Unsuccessful Proposers	June 14, 2024
Negotiate Contract	June - July 2024
Begin Contract Work	July 1, 2025

EWU reserves the right to revise the above schedule.

**2.3. SUBMISSION OF PROPOSALS**

The Proposal must be **received by the RFP Coordinator** no later than 3:00 p.m., Pacific Time, in Cheney, Washington, on May 3, 2024.

Proposals must be submitted electronically as an attachment to an email to Cody Ross, the RFP Coordinator, at the email address listed in Section 2.1. Attachments to email shall be in Microsoft Word format or PDF. Zipped files cannot be received by EWU and cannot be used for submission of Proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Contractor to the offer. EWU does not assume responsibility for problems with Contractor’s email. If EWU’s email is not working, appropriate allowances will be made.

Proposals **may not** be transmitted using facsimile transmission.

Contractors should allow sufficient time to ensure timely receipt of the Proposal by the RFP Coordinator. Late Proposals will not be accepted and will be automatically disqualified from further consideration, unless EWU’s email is found to be at fault. All Proposals and any accompanying documentation become the property of EWU and will not be returned.

**2.4. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Proposals submitted in response to this competitive solicitation shall become the property of EWU. Per RCW 39.26.030, Proposals and Proposal evaluations are exempt from disclosure until EWU announces the Apparent Successful Contractor; thereafter, the Proposals shall be deemed public records as defined in RCW 42.56.

Any information in the Proposal that the Contractor desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56, or other state or federal law that provides for the nondisclosure of Contractor’s document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Contractor is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words “Proprietary Information” printed on the lower right hand

corner of the page. Marking the entire Proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Contractor has marked as "Proprietary Information," EWU will notify the Contractor of the request and of the date that the records will be released to the requester unless the Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, EWU will release the requested information on the date specified. If a Contractor obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to RCW 42.56, or other state or federal law that provides for nondisclosure, EWU shall maintain the confidentiality of the Contractor's information per the court order.

All EWU public record requests should follow the [Request Procedures and Guidelines for Obtaining Public Records](#).

**2.5. REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be sent to Contractors. EWU also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a Contract.

**2.6. MINORITY, WOMEN & VETERAN-OWNED BUSINESS PARTICIPATION**

In accordance with chapters 39.19 and 43.60A RCW, the State of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE) or Department of Veteran's Affairs. Participation may be either on a direct basis in response to this solicitation or on a Subcontractor basis. However, no preference will be included in the evaluation of Proposals, no minimum level of minority, women, or veteran-owned business participation shall be required as a condition for receiving an award, and Proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. The suggested veteran-owned business participation goal is 3%. These goals are voluntary. For information on certified firms, Contractors may contact the Office of Minority and Women's Business Enterprises or the Washington State Department of Veteran's Affairs.

**2.7. ACCEPTANCE PERIOD**

Proposals must provide 90 days for acceptance by EWU from the due date for receipt of Proposals.

**2.8. RESPONSIVENESS**

All Proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Contractor is specifically notified that failure to comply with any part of the RFP may result in rejection of the Proposal as non-responsive.

EWU also reserves the right at its sole discretion to waive minor administrative irregularities.

**2.9. MOST FAVORABLE TERMS**

EWU reserves the right to make an award without further discussion of the Proposal submitted. Therefore, the Proposal should be submitted initially on the most favorable terms which the Contractor can propose. There will be no best and final offer procedure. EWU does reserve the right to contact a Contractor for clarification of its Proposal.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a Contract resulting from this RFP. Contract negotiations may incorporate some or all of the



Contractor's Proposal. It is understood that the Proposal will become a part of the official procurement file on this matter without obligation to EWU.

**2.10. CONTRACT AND GENERAL TERMS & CONDITIONS**

The Apparent Successful Contractor will be expected to enter into a Contract which is substantially the same as the sample Contract and its general terms and conditions attached as Exhibit C. **In no event is a Contractor to submit its own standard contract terms and conditions in response to this solicitation.** The Contractor may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A and B to this solicitation. All exceptions to the Contract terms and conditions must be submitted as an attachment to Exhibit A and B, Certifications and Assurances form. EWU will review requested exceptions and accept or reject the same **at its sole discretion.**

**2.11. COSTS TO PROPOSE**

EWU will not be liable for any costs incurred by the Contractor in preparation of a Proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

**2.12. NO OBLIGATION TO CONTRACT**

This RFP does not obligate the State of Washington or EWU to contract for services specified herein.

**2.13. REJECTION OF PROPOSALS**

EWU reserves the right at its sole discretion to reject any and all Proposals received without penalty and not to issue a Contract as a result of this RFP.

**2.14. COMMITMENT OF FUNDS**

The President of EWU or his/her delegate is the only individual who may legally commit EWU to the expenditures of funds for a Contract resulting from this RFP. No cost chargeable to the proposed Contract may be incurred before receipt of a fully executed Contract.

**2.15. INSURANCE COVERAGE**

**1. General Requirements**

- A. Contractor shall, at its own expense, obtain and keep in force insurance as follows during the Period of Performance of the Contract. Upon request, Contractor shall furnish evidence in the form of a Certificate of Insurance satisfactory to EWU that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may, at EWU's sole option, result in the Contract's termination.
- B. Contractor 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 Contractor's liability or responsibility.
- C. All insurance provided in compliance with the Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by EWU.

**2. Specific Requirements**

- A. Commercial General Liability Insurance: The Contractor shall at all times during the Period of Performance of the 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 the Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor 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 Contractor’s premises/operations, independent contractors, products/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.

Contractor waives all rights against EWU 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 million
Products-completed operations aggregate	\$2 million
Personal and advertising injury aggregate	\$1 million
Each occurrence (applies to all of the above)	\$1 million
Fire damage limit (per occurrence)	\$50,000
Medical expense limit (any one person)	\$5,000

- B. Professional Liability (Errors and Omissions) Insurance: Limits of liability shall not be less than \$1 million per claim and \$2 million annual aggregate.
- C. Business Auto Policy: In the event that services delivered pursuant to the Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of services by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1 million per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against EWU for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

- D. Employer’s Liability (Stop Gap): The Contractor 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 Employer’s Liability insurance with a limit of no less than \$1 million. EWU will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of the Contract.

**3. Additional Insurance Provisions**

All above insurance policies shall include, but not be limited to, the following provisions:

- A. Additional Insured: EWU shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.
- B. Notice of Policy Cancellation/Non-Renewal

- i. For insurers subject to RCW 48.18 (admitted and regulated by the Washington State Insurance Commissioner), a written notice shall be given to EWU’s Risk Manager or designee 45 calendar days prior to cancellation or any material change to the policy as it relates to the Contract. Written notice shall include the affected Contract reference number.
    - ii. For insurers subject to RCW 48.15 (Surplus Lines), a written notice shall be given to EWU’s Risk Manager or designee 20 calendar days prior to cancellation or any material change to the policy or policies related to the Contract. Written notice shall include the affected Contract reference number.
    - iii. If cancellation on any policy is due to non-payment of premium, a written notice shall be given to EWU’s Risk Manager or designee 10 calendar days prior to cancellation. Written notice shall include the affected Contract reference number.
  - C. Identification: Policies and certificates of insurance shall include the affected Contract reference number.
  - D. Insurance Carrier Rating: The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. 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 EWU’s Risk Manager, 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 RCW 48.15 and WAC 284-15.
  - E. Excess Coverage: The limits of all insurance required to be provided by the Contractor 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 Contractor from liability in excess of such limits.
  - F. Limit Adjustments: EWU reserves the right to increase or decrease limits as appropriate.
- 4. Industrial Insurance Coverage: The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, EWU may terminate the Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

### 3. PROPOSAL CONTENTS

Proposals must be written in English and submitted electronically to the RFP Coordinator in the order noted below:

- 1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP);
- 2. Project proposal
- 3. Cost proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Proposal, but should assist the Contractor in preparing a thorough response.

Items marked “mandatory” must be included as part of the Proposal for the Proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### 3.1. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Contractor to a contractual

relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Contractor and any proposed Subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/email address of legal entity or individual with whom Contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Contractor (sole proprietorship, partnership, corporation, etc.), the year the entity was organized to do business as the entity now substantially exists, and a brief company history.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
5. Location of the facility from which the Contractor would operate.
6. Identify any state employees or former state employees employed or on the firm's governing board as of the date of the Proposal. Include their position and responsibilities within the Contractor's organization. If following a review of this information, it is determined by EWU that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a Contract.

### **3.2. PROJECT PROPOSAL (SCORED)**

The Technical Proposal must contain a comprehensive description of services including the following elements:

1. **Organizational experience, structure, and stability:**
  - a. Give a brief history of your company
  - b. Describe the management structure of your firm
  - c. Describe the management structure of the team dedicated to this account
  - d. Describe your firm's commitment to diversity
  - e. Describe your firm's commitment to corporate social responsibility
  - f. Provide a banking reference
  - g. Is your firm a party to any pending or prior litigation, reorganizations, or bankruptcy petitions?
2. **Work Plan:**
  - a. Describe your work plan for deliverables requested in this RFP document.
  - b. Describe your transition plan. Responses should indicate if your firm will meet the minimum requirements of either purchasing or replacing existing athletic apparel, equipment, and footwear inventories.
3. **Project Schedule:**
  - a. Are you able to meet the timeline requirements of this RFP? All deliverables need to be received for use no later than July 1, 2025.
4. **Risks:**
  - a. Identify and discuss any risks your firm has identified with this project and describe your plan to mitigate any apparent risk.
5. **Deliverables:**
  - a. Identify and provide a detailed list of the deliverables for this RFP. Lists should include a detailed breakdown for each EWU sport.
6. **Related Information (MANDATORY)**

- A. If the Contractor or any Subcontractor contracted with the State of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
- B. If the Contractor's staff or Subcontractor's staff was an employee of the State of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
- C. If the Contractor has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Contractor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
- D. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Contractor's position on the matter. EWU will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of the past experience. If no such termination for default has been experienced by the Contractor in the past five years, so indicate.

**6. References (MANDATORY)**

- A. List names, addresses, telephone numbers, and fax numbers/email addresses of three (3) business references for the lead staff person for whom work has been accomplished and briefly describe the type of service provided. **Do not include current EWU staff as references.**
- B. By submitting a Proposal in response to this RFP, the Contractor and team members grant permission to EWU to contact these references and others, who from EWU's perspective, may have pertinent information. EWU may or may not, at EWU's discretion, contact references. EWU may evaluate references at EWU's discretion.

**7. OMWBE & Veteran-Owned Certification (OPTIONAL AND NOT SCORED)**

- A. Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm and/or women-owned firm(s) will be participating on this project or certification from the Department of Veteran's Affairs if veteran-owned firms will be participating on this project. For information, Contractors may contact the Office of Minority and Women's Business Enterprises or the Washington State Department of Veteran's Affairs.

**B. Environmental and Social Issues (OPTIONAL AND NOT SCORED)**

- 1. Indicate use of environmentally safe products and processes.

**3.3. COST PROPOSAL (SCORED)**

The evaluation process is designed to award this procurement not necessarily to the Contractor of least cost, but rather to the Contractor whose Proposal best meets the requirements of this RFP. However, Contractors are encouraged to submit Proposals that are consistent with state government efforts to conserve state resources.

**1. Identification of Costs (SCORED)**

Identify all costs in U.S. dollars including expenses to be charged for performing the services necessary to accomplish the objectives of the Contract. The Contractor is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks

and to produce the deliverables under the Contract. Contractors are required to collect and pay Washington State sales and use taxes, as applicable.

**2. Discount Pricing (SCORED)**

- A. Identify all pricing discounts for apparel, equipment, uniforms, and footwear.
- B. EWU to receive a minimum of 45% off MSRP on all footwear.
- C. EWU to receive a minimum of 50% off MSRP on all apparel, custom uniforms, accessories, and equipment.
- D. EWU to receive a minimum annual allotment of \$220,000 per year in promotional merchandise if the vendor's minimum purchase requirements are satisfied.
- E. All pricing to include any screen-printing and embroidery services.

**3. Service (SCORED)**

**Preference will be given for vendors that can provide direct-to-consumer access to product and footwear. If vendor could only provide direct-to-consumer access for certain sports, the service must be defined.**

**4. Promotional Material (SCORED)**

- A. Promotional allotment: Vendor must provide promotional bonuses for reaching and increasing annual purchase volume levels.
- B. Additional promotional bonuses must be provided for reaching specific sport and academic performance achievements, including, but not limited to, conference championships, NCAA and other post-season national tournament participation and championships, Big Sky Conference "President's Cup" performance, and any applicable conference affiliated and NCAA coaching awards.

**5. Brand Recognition (SCORED)**

The vendor must have the ability to provide high-quality, nationally recognized, name brand apparel and uniforms. After contract execution, EWU will exclusively purchase contractor's brand on normal athletics purchasing cycles, but will continue to use existing inventory. If contractor will be providing a different brand than that being currently utilized by EWU, and wishes to convert existing inventory, contractor will be required to assume all costs necessary for conversion. Current estimated total replacement costs of all inventory: \$450,000.00

**6. Value added items (SCORED):**

Please include information in your proposal on any "value-added" items that are included in your proposal. Items could include marketing products such as mannequins to display uniforms or any other items or incentives used to promote the brand and strengthen the partnership with EWU.

***Costs for Subcontractors are to be broken out separately. Please note if any Subcontractors are certified by the Office of Minority and Women's Business Enterprises.***

## **4. EVALUATION AND CONTRACT AWARD**

### **4.1. EVALUATION PROCEDURE**

Responsive Proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of Proposals shall be accomplished by an evaluation team(s), to be designated by EWU, which will determine the ranking of the Proposals.

EWU, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

The RFP Coordinator may contact the Contractor for clarification of any portion of the Contractor's Proposal.

**4.2. EVALUATION WEIGHTING AND SCORING**

The following weighting and points will be assigned to the Proposal for evaluation purposes:

<b>Project Proposal</b> Organizational experience, structure, stability Work plan Project schedule Risks Deliverables Related Information	<b>20%</b>
<b>Cost Proposal</b> Identification of costs Discount pricing Promotional Material Service Brand Recognition Value-added items	<b>70%</b>
<b>Direct to Consumer Access</b>	<b>10%</b>
<b>Total</b>	<b>100%</b>

EWU reserves the right to award the Contract to the Contractor whose Proposal is deemed to be in the best interest of EWU and the State of Washington.

**4.3. ORAL PRESENTATIONS MAY BE REQUIRED**

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning Proposal. EWU, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of Contract award. Should EWU elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time and location. Commitments made by the Contractor at the oral interview, if any, will be considered binding. The score from the oral presentation will be considered independently and will determine the Apparent Successful Contractor.

**4.4. NOTIFICATION TO PROPOSERS**

EWU will notify all Proposers of their selection via email upon completion of the evaluation process. After the announcement of the Apparent Successful Contractor, Proposers will be offered a debriefing upon written request. Proposers will be given 3 business days after the Apparent Successful Contractor is announced to request a debriefing. Reference 4.6 for the Protest Procedure.

**4.5. COMPLAINT PROCESS**

Pursuant to RCW 39.26.170, the complaint process allows Proposers to focus on the solicitation requirements and evaluation process and raise issues with these processes early enough in the process to allow EWU to correct a problem before Proposals are submitted and time expended on evaluations. Complaints may be made only by Proposers who intend to submit a response to the

solicitation. Complaints filed on the day solicitation responses are due shall be reviewed and considered if time permits. Complaints that do not follow these procedures shall not be considered.

The complaint process will meet the following minimum requirements:

1. Proposers will be given an opportunity to submit a complaint to EWU based on any of the following:
  - a. The solicitation unnecessarily restricts competition;
  - b. The solicitation evaluation or scoring process is unfair or flawed; or
  - c. The solicitation requirements are inadequate or insufficient to prepare a response.
2. Proposers will be allowed to submit complaints up to 5 business days prior to the bid response deadline. Complaints must meet the following requirements:
  - a. Must be in writing.
  - b. Must be sent to the RFP Coordinator, or designee.
  - c. Should clearly articulate the basis for the complaint.
  - d. Should include a proposed remedy.
3. The RFP Coordinator or designee will respond to complaints in writing. The RFP Coordinator will consider all available facts and provide a response to the Proposer. The response will include the decision, how the review was conducted and the basis upon which a decision was made.
4. The response to complaints including any changes to the solicitation will be posted as an amendment on EWU Procurement and Contracts Website.
5. The EWU Director of Procurement and Contracts will be notified of all complaints and provided a copy of the response.
6. The complaint may not be raised again during the protest period.
7. The complaint process does not include an appeal process. This complaint procedure constitutes the sole administrative remedy available to Proposers under this solicitation.

#### **4.6. PROTEST PROCEDURE**

Pursuant of RCW 39.26.170, the protest process occurs after the Proposals are submitted and evaluated. This allows Proposers to focus on the evaluation process to ensure its integrity and fairness. Protests can raise issues related to the evaluation process as set out in the solicitation or how the process was executed. This allows for evaluation process errors and problems to be corrected before a contract is executed. Protests that do not follow these procedures shall not be considered.

The protest process will meet the following requirements:

1. After the announcement of the Apparent Successful Contractor, Contractors will be offered a debriefing upon written request.
2. Contractors will be given 3 business days after the Apparent Successful Contractor is announced to request a debriefing.
  - A. Discussion at the debriefing conference will be limited to the following:
    - i. Evaluation and scoring of the Contractor's Proposal;
    - ii. Critique of the Proposal based on the evaluation;
    - iii. Review of Contractor's final score in comparison with other final scores without identifying the other Contractors.
  - B. Comparisons between Proposals or evaluations of the other Proposals will not be allowed.
  - C. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.
3. Contractors are required to participate in a debriefing as a prerequisite for submitting a protest.
4. Contractors will be given 5 business days after their debriefing to file a written protest.
5. The protest process will allow Contractors an opportunity to submit a protest based only on the following:
  - A. A matter of bias, discrimination, or conflict of interest on the part of an evaluator;



- B. Errors in computing the scores; or
  - C. Non-compliance with procedures described in the solicitation document or EWU protest process.
6. Protests are to be submitted to the EWU Director of Procurement and Contracts and the RFP Coordinator.
  7. A written response within 10 business days from receipt of the protest, unless additional time is needed. The protesting Contractors shall be notified if additional time is needed.
  8. The final determination of the protest shall:
    - A. Find the protest lacking in merit and uphold EWU's action; or
    - B. Find only technical or harmless errors in EWU's acquisition process and determine EWU to be in substantial compliance and reject the protest; or
    - C. Find merit in the protest and provide EWU options which may include:
      - i. Correct the errors and re-evaluate all Proposals, and/or
      - ii. Reissue the solicitation document and begin a new process, or
      - iii. Make other findings and determine other courses of action as appropriate.

The protest decision is final. If a protesting Contractor does not accept the protest response, the Contractor may try to seek relief from superior court. If EWU determines that the protest is without merit, EWU will enter into a contract with the Apparent Successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## 5. RFP EXHIBITS

### EXHIBIT A: CERTIFICATIONS AND ASSURANCES

Proposer makes the following certifications and assurances as a required element of the Proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related Contract:

1. Proposer declares that all answers and statements made in the Proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, Proposer may freely join with other persons or organizations for the purpose of presenting a single Proposal.
3. The attached Proposal is a firm offer for a period of 90 days following the due date for receipt of Proposals, and it may be accepted by EWU without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-day period.
4. In preparing this Proposal, Proposer has not been assisted by any current or former employee of the State of Washington whose duties relate (or did relate) to this Proposal or prospective Contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, Proposer has described them in full detail on a separate page attached to this document.
5. Proposer understands that EWU will not reimburse Proposer for any costs incurred in the preparation of this Proposal. All Proposals become the property of EWU, and Proposer claims no proprietary right to the ideas, writings, items, or samples, unless so stated in this Proposal.
6. Proposer agrees that submission of the attached Proposal constitutes acceptance of the solicitation contents and the attached sample Contract and general terms and conditions. Proposer also states that, unless required by law, it has not disclosed its prices and/or cost data which have been submitted with its Proposal to any competitor or other Proposer and will not make any such disclosure prior to an/the Apparent Successful Bidder being selected. If there are any exceptions to these terms, Proposer has described those exceptions in detail on a page attached to this document.
7. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
8. Proposer grants EWU the right to contact references and others, who may have pertinent information regarding the ability of the Proposer and the lead staff person to perform the services contemplated by this Competitive Solicitation
9. Wage Theft. I/we certify as follows:
  - This firm has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), any provision of RCW Chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced solicitation date.

OR

  - This firm has been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), a provision of RCW Chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced solicitation date.

10. Supporting Worker's Rights. I/we certify as follows:

This firm does NOT require its employees to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers.

OR

This firm DOES require its employees to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers.

11. Debarment. I/we certify as follows:

*NO DEBARMENT.* Proposer and/or its principals are not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with any federal, state, or local governmental entity within the United States.

OR

*DEBARRED.* As detailed on the attached explanation (Proposer to provide), Proposer and/or its principals presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with a federal, state, or local governmental entity within the United States.

12. Criminal Offense. Proposer (including Proposer's officers) certifies as follows:

*NO CRIMINAL OFFENSE.* Proposer has not, within the three (3) year period preceding the date of this Competitive Solicitation, been convicted or had a civil judgment rendered against Proposer for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. Proposer further certifies that it is not presently indicted or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in this paragraph.

OR

*CRIMINAL Offense.* As detailed on the attached explanation (Proposer to provide), within the three (3) year period preceding the date of this Competitive Solicitation, Proposer has been convicted or had a civil judgment rendered against Proposer for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

13. Taxes. Proposer certifies as follows:

*TAXES PAID.* Except as validly contested, Bidder is not delinquent and has paid or has arranged for payment of all taxes due to the State of Washington and has filed all required returns and reports as applicable.

OR

*DELINQUENT TAXES.* As detailed on the attached explanation (Bidder to provide), Bidder has not paid or arranged for payment of all taxes due to the State of Washington and/or has not timely filed all required returns and reports as applicable.

14. Financially Solvent. Proposer certifies as follows:

*FINANCIALLY SOLVENT.* Bidder is financially stable and solvent, has adequate cash reserves to meet all financial obligations, has not commenced bankruptcy proceedings voluntarily or otherwise, and is not subject to any judgments, liens, or encumbrances of any kind affecting title to any Goods or Services that are the subject of this Competitive Solicitation.

OR

*NOT FINANCIALLY SOLVENT.* As detailed on the attached explanation (Bidder to provide), Bidder is not financially stable and solvent – i.e., Bidder does not have adequate cash reserves to meet all financial obligations, has commenced bankruptcy proceedings voluntarily or

otherwise, or is subject to a judgment, lien, or encumbrance that affects title to the Goods or Services that are the subject of this Competitive Solicitation.

15. Contract Termination for Default or Cause. Proposer certifies as follows:

*NO TERMINATION FOR DEFAULT OR CAUSE.* Bidder has not, within the three (3) year period preceding the date of this Competitive Solicitation, had one (1) or more federal, state, or local governmental contracts terminated for cause or default.

OR

*TERMINATION FOR DEFAULT OR CAUSE.* As detailed on the attached explanation (Bidder to provide), within the three (3) year period preceding the date of this Competitive Solicitation, Bidder has had one (1) or more federal, state, or local governmental contracts terminated for cause or default.

16. Authorization to Conduct Business. Proposer certifies as follows (must check one):

*CURRENT AUTHORIZATION.* Proposer has completed all required filings and/or registrations required of Proposer to conduct business in the State of Washington, and the state where Proposer is registered if different from the State of Washington and registration is required. If Proposer has a Unified Business Identifier (UBI) number, Proposer's UBI number is: \_\_\_\_\_.

OR

*PROPOSER WILL RECEIVE AUTHORIZATION.* As detailed on the attached explanation (Bidder to provide), Proposer has not currently completed all required filings and/or registrations to conduct business in the State of Washington and/or the state where Proposer is registered, if different from the State of Washington, but Proposer will complete all necessary filings and/or registrations within twenty-four (24) hours of designated as the/an Apparent Successful Bidder by EWU, and will provide proof of such to EWU. Failure to provide evidence of required registrations within said twenty-four hours will result in Proposer being deemed a nonresponsive bid.

OR

*PROPOSER IS NOT AUTHORIZED.* Proposer has not completed all required filings and/or registrations required of Proposer to conduct business in the State of Washington, and the state where Proposer is registered, if different from the State of Washington. Note: EWU requires all awarded Proposers (including Washington firms and out of state firms) to be authorized to conduct business in the State of Washington, and their home state, if different from the State of Washington. Proposers who are not so authorized will not be awarded a Contract.

17. Proposer (circle one) is/is not submitting proposed Contract exceptions (See Section 2.10, Contract and General Terms & Conditions). If Contract exceptions are being submitted, Proposer has attached them to this form.

On behalf of the Proposer submitting this Proposal, my name below attests to the accuracy of the above statements. Proposer is submitting a scanned signature of this form with its Proposal.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name

## EXHIBIT B: GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS** - As used throughout this Contract, the following terms shall have the meaning set forth below:
  - A. EWU shall mean Eastern Washington University, any division, section, office, unit or other entity of EWU, or any of the officers or other officials lawfully representing EWU.
  - B. Agent shall mean the Vice President of Business & Finance or assigned delegate authorized to act on behalf of EWU.
  - C. Contractor shall mean that firm, provider, organization, individual or other entity performing service(s) under this Contract, and shall include all employees of Contractor.
  - D. Subcontractor shall mean one not in the employment of Contractor, who is performing all or part of those services under this Contract under a separate contract with Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
  - E. Confidential Information means information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 of the Revised Code of Washington (RCW) or other state or federal law. Confidential Information includes, but is not limited to, personal information as defined in RCW 19.255.010 and RCW 42.56.590, names, addresses, social security numbers, email addresses, telephone numbers, student educational records as defined in the Family Educational Rights and Privacy Act, financial profiles, credit card information, consumer information as defined in 16 C.F.R. § 682.1, driver's license numbers, protected health information as defined in 45 C.F.R. Parts 160 and 164, law enforcement records, EWU source code or object code, EWU security data, IP addresses, log-on user identification information, configuration parameters, or any information identifiable to an individual that relates to any of the types of information listed above.
2. **ACCESS TO DATA** - In compliance with RCW 39.26.180, Contractor shall provide access to data generated under this Contract to EWU, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodology for those models.
3. **ADVANCED PAYMENTS PROHIBITED** - No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by EWU.
4. **AMENDMENTS** - This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
5. **AMERICANS WITH DISABILITIES ACT (ADA)** - Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
6. **ASSIGNMENT** - Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by Contractor without prior written consent of EWU.
7. **ATTORNEYS' FEES** - In the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney fees and costs.
8. **CONFIDENTIALITY/DATA PRACTICES/SAFEGUARDING OF INFORMATION**
  - A. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for

the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without the University's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by the University. Contractor and its Subcontractors are considered a "school official" under FERPA and agree to comply with the requirements of FERPA and its related regulations governing the use and redisclosure of personally identifiable information from education records.

- B. Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the University's information to prevent unauthorized access to, use, or disclosure of such information. Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Confidential Information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and its applicable regulations, as well as the Federal Trade Commission's Safeguard Rules promulgated under the Gramm-Leach-Bliley Act. Contractor shall ensure any contracts with agents or Subcontractors include similar conditions requiring the use of safeguards to prevent unauthorized access or disclosure of Confidential Information and a requirement to provide notification of any potential unauthorized access or disclosure. The University reserves the rights to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by the Contractor through this agreement. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by the University. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.
- C. Contractor shall have in place policies and procedures to detect patterns, practices, or specific activities that indicate the possible existence of identity theft. The Federal Trade Commission, as part of the Fair and Accurate Credit Transactions Act (FACT) of 2003, has issued regulations known as the Red Flag Rules. When detected, Contractor shall: (1) report all Red Flags and possible instances of identity theft to the University in accordance with section C and, (2) take prompt steps to prevent or mitigate possibly identify theft when Red Flags are detected.
- D. The Contractor shall notify the University in writing within five (5) working days of becoming aware of any unauthorized access, use or disclosure of Confidential Information by Contractor, its officers, directors, employees, contractors, Subcontractors, agents, or by a third party to whom Contractor disclosed Confidential Information. A breach shall be treated as discovered by the Contractor on the first day on which such breach is known to the Contractor, including any of Contractor's employees or agents, or should reasonably have been known to the Contractor to have occurred. Notification should be sent to the Contract Administrator. The Contractor shall give highest priority to immediately mitigate and remediate any unauthorized access and shall devote such resources as may be required to accomplish that goal. The Contractor shall cooperate with all University efforts, including, but not limited to, (1) providing any and all information necessary to enable the University to fully understand the nature and scope of the breach, including but not limited to identification of each individual whose Confidential Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed, (2) taking action to preserve forensic evidence and identifying, mitigating, and remediating the cause of the breach, and (3) take such other steps as needed to comply with 42 U.S.C. § 17932, and all applicable regulations adopted to implement that statute.
- E. If data compromise and/or identify theft occurs and is found to be the result of Contractor's acts or omissions, Contractor agrees to defend, indemnify and hold harmless the University for any damages related to unauthorized use or disclosure of Confidential Information by the Contractor, its officers, directors, employees, Subcontractors or agents, including but not limited to the costs incurred by the University in responding to or recovering from the breach.
- F. Contractor agrees to implement an appropriate recordkeeping and reporting process to enable it to provide the following information: (1) the Confidential Information received in the performance of this Contract and the purpose(s) for which the Confidential Information was received; (2) who received, maintained and used the Confidential Information; (3) for any disclosure of Confidential Information, the date, name of the person who received the information, a brief description of what was disclosed, and a statement as to why the information was disclosed; and, (4) the final disposition

of the Confidential Information. Contractor's records shall be subject to inspection review or audit in accordance with this agreement.

- G. Immediately upon expiration or termination of this Contract or the pertinent transaction with the University, Contractor shall, at the University's option: (1) certify to University that Contractor has destroyed all Confidential Information; (2) return all Confidential Information to the University; or (3) take whatever other steps the University requires of Contractor to protect the University's Confidential Information. Contractor will retain no copies of Confidential Information.
- H. Violation of this section by Contractor or its Subcontractors may result in termination of this Agreement and demand for return of all Confidential Information, monetary damages, or penalties.

9. **COPYRIGHT 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 EWU. EWU shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to EWU effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to EWU 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. Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to EWU.

Contractor shall exert all reasonable effort to advise EWU, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract. EWU shall receive prompt written notice of each notice or claim of infringement received by Contractor with respect to any data delivered under this Contract. EWU shall have the right to modify or remove any restrictive markings placed upon the data by Contractor.

10. **COVENANT AGAINST CONTINGENT FEES** - 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 maintained by Contractor for securing business.

EWU shall have the right, in the event of breach of this clause by 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.

11. **DISALLOWED COSTS** - Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.
12. **DISPUTES** - Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.
- A. The request for a dispute hearing must:
    - i. Be in writing;
    - ii. State the disputed issue(s);
    - iii. State the relative positions of the parties;
    - iv. State Contractor's name, address, and Contract number; and

- v. Be mailed to the Agent and the other party's (respondent's) project manager within three working calendar days after the parties agree that they cannot resolve the dispute.
- B. The respondent shall send a written answer to the requester's statement to both the Agent and the requester within five (5) working calendar days.
- C. The Agent shall review the written statements and reply in writing to both parties within ten (10) working days. The Agent may extend this period if necessary by notifying the parties.
- D. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

13. **DUPLICATE PAYMENT-** EWU shall not pay Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

14. **FORCE MAJEURE**

- A. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics or other similar occurrences.
- B. Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.
- C. If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.
- D. EWU reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against EWU.

15. **GOVERNING LAW** - This Contract shall be construed and 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 Spokane County.

16. **INDEMNIFICATION/HOLD HARMLESS** - Contractor shall indemnify, defend, and hold harmless EWU, and all officials, agents and employees of EWU, from and against all claims for injuries or death arising out of or resulting from the performance, or failure of performance, of the Contract. "Claim," as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractor expressly agrees to indemnify, defend, and hold harmless EWU for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless EWU shall not be eliminated by any actual or alleged concurrent negligence of EWU or its agents, agencies, employees and officials.

Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor or its employees. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless EWU and its agencies, officials, agents or employees.

17. **INDEPENDENT CAPACITY OF CONTRACTOR** - Nothing contained in this Contract is intended to create, nor shall it be construed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of effectuating the provisions of this Contract. This



Contract is not intended to create a relationship of agency, representation, joint venture, or employment between the Parties. Nothing herein contained shall prevent any of the Parties from entering into similar arrangements with other parties. The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of EWU. Contractor will not hold himself/herself out as or claim to be an officer or employee of EWU or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

18. **LICENSING, ACCREDITATION AND REGISTRATION** - Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

19. **LIMITATION OF AUTHORITY** - Only the Agent or Agent's 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 Agent.

20. **MWBE PARTICIPATION**

- A. Contractor agrees it will undertake affirmative action efforts to utilize Minority Owned, Women Owned, and Veteran Owned Business Enterprises (collectively "MWBE") either certified by the Office of MWBE, Department of Veterans Affairs, or self-identified in the execution of this Contract. The voluntary goals for EWU are 10% minority-owned, 4% women-owned, and 3% veteran-owned businesses. Voluntary affirmative action efforts include but are not limited to the following:
  - i. Advertising opportunities for Subcontractors either through newspaper/journal ads, or through direct solicitation from MWBE firms.
  - ii. Providing MWBEs that express interest with adequate and timely information about the scope and requirements of this Contract.
- B. The Contractor shall furnish a statement with each invoice for payment, on a form designated by EWU, of the actual dollars earned by each certified and self-identified MWBE firm utilized and the totals earned in each category.

21. **NONDISCRIMINATION** - The Parties agree to comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

- A. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, age, status as a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (collectively referred to as "protected veterans") or the presence of any sensory, mental, or physical disability. To the extent applicable, Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a protected class in all employment practices. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training.
- B. Contractor shall in all solicitation for employees or job orders for employees placed with any employment agency, union, or other firm or agency, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, age, protected veteran status, or the presence of any sensory, mental, or physical disability. The words "equal opportunity employer" in advertisements shall constitute compliance with this section.
- C. Contractor shall send to each labor union, employment agency, or representative of works with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to this Contract and RCW 49.60.

- D. Contractor shall include the provisions of the foregoing paragraphs A and B in every sub-agreement or purchase order for the goods or services which are the subject matter of this Contract.
- E. In the event of non-compliance or refusal to comply by the Contractor with any of these non-discrimination provisions or any nondiscrimination law or regulation, EWU shall have the right, at its option, to rescind, cancel, or terminate this Contract in whole or in part, and Contractor may be declared ineligible for further contracts with EWU. Contractor shall be given notice of its noncompliance and a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein. In the event this Contract is terminated under this provision, EWU shall be entitled to pursue the same remedies against Contractor and pay the same amount for services rendered as set forth in section of this Contract governing Termination for Cause.

22. **PUBLICITY** - Contractor agrees to submit to EWU all advertising and publicity matters relating to this Contract wherein EWU's name is mentioned or language used from which the connection of EWU's name may, in EWU's judgment, be inferred or implied. Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of EWU.

23. **RECORDS MAINTENANCE** - Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to MWBE participation, protection and use of EWU's Confidential Information, 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. Records of Contractor's payroll and reimbursable expenses pertaining to this Contract shall be kept on a generally recognized accounting basis, shall be available to EWU to EWU or its authorized representatives at mutually convenient times. Contractor shall retain such records for a period of six (6) years following the date of final payment. 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.

At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by EWU, personnel duly authorized by EWU, the Office of the State Auditor, the Department of Enterprise Services, the Joint Legislative and Review Committee, and federal and state officials so authorized by law, regulation or agreement. This includes access to documents and all information that supports Contractor's services provided under this Contract.

During the Contract's term, Contractor shall provide access to these items within Spokane County. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

24. **REGISTRATION WITH DEPARTMENT OF REVENUE** - Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all federal, state, and local taxes due on payments made under this Contract.

25. **RIGHT OF INSPECTION** - Contractor shall provide right of access to its facilities to EWU, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

26. **SEVERABILITY** - If any provision of this Contract or any document incorporated by reference violates any statute or rule of law of the State of Washington, such invalid provisions shall be declared severed and the remainder of this Contract shall remain binding.

27. **SITE SECURITY** - While on EWU premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

28. **SUBCONTRACTING** - Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of EWU. In no event shall the existence of the subcontract operate to release or reduce the liability of Contractor to EWU for any breach in the performance of Contractor's duties. This clause does not include contracts of employment between Contractor and personnel assigned to work under this Contract.

Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons Confidential Information without the express written consent of EWU or as provided by law.

29. **TAXES** - All payments accrued because of payroll taxes, unemployment contributions, or any other taxes, insurance or other expenses for Contractor or its staff shall be the sole responsibility of Contractor. Contractor is also required to pay all necessary taxes of any foreign country where they may do business, as well as any necessary taxes, premiums, and licenses necessary to do business in the United States and the State of Washington.

30. **TERMINATION FOR CAUSE BY EWU**

- A. In the event EWU determines that Contractor has failed to comply with the conditions of this Contract, is in material breach, or fails to fulfill in a timely and/or proper manner its obligations under this Contract, EWU has the right to suspend or terminate this Contract, in part or in whole. Before suspending or terminating the Contract, EWU shall notify Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by EWU, or if such corrective action is deemed by EWU to be insufficient, the Contract may be terminated or suspended. EWU reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by Contractor or a decision by EWU to terminate the Contract. Once Contractor receives notice that this Contract has been suspended or terminated, Contractor shall perform no further services for EWU.
- B. In the event of termination or suspension for cause, Contractor will be entitled to receive compensation for satisfactory work completed prior to the effective date of such termination/suspension. Such compensation shall be based on the value of such work to EWU.
- C. In the event of termination, EWU shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, Contractor shall be liable for all damages authorized by law including, but not limited to, any price difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The rights and remedies of EWU provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

31. **TERMINATION FOR CAUSE BY CONTRACTOR** - This Contract may be terminated by Contractor if after reasonable notice and an opportunity to cure, EWU should fail substantially to perform in accordance with a material term of this Contract through no fault of Contractor. Contractor shall give written notice to EWU of such termination at least thirty (30) days before the date of termination. If the project is suspended by EWU for more than ninety (90) consecutive days, Contractor may terminate this Contract by giving written notice. Upon termination by Contractor, EWU shall be liable only for payment required under the terms of this Contract for services actually rendered or materials delivered prior to the effective date of termination. In no event shall Contractor be entitled to consequential or indirect costs associated with termination. There shall be no payment for anticipated profit, unperformed services, or unabsorbed overhead.

32. **TERMINATION FOR CONFLICT OF INTEREST** - EWU may terminate this Contract by written notice to Contractor if EWU determines, after due notice to Contractor and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, EWU shall be entitled

to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract. The rights and remedies of EWU provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

33. **TERMINATION FOR CONVENIENCE** - Except as otherwise provided in this Contract, EWU may, by 30 calendar day's written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. Once Contractor receives notice that this Contract has been terminated for convenience, Contractor shall perform no further services for EWU. Contractor will be entitled to receive compensation for satisfactory work completed prior to the effective date of such termination. Such compensation shall be based on the value of such work to EWU.

Additionally, EWU may terminate this agreement by 90 calendar day's written notice if new technology or advancements or upgrades in technology allow for alternative to the services provided under this Contract. If this Contract is so terminated, EWU 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.

34. **TERMINATION FOR 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, EWU may terminate the Contract under the "Termination for Convenience" clause, without the thirty-day notice requirement, subject to renegotiation at EWU's discretion under those new funding limitations and conditions.
35. **TERMINATION FOR WITHDRAWAL OF AUTHORITY** - In the event that EWU's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, EWU may terminate this Contract by seven (7) calendar day's written notice to Contractor. No penalty shall accrue to EWU in the event this section shall be exercised. This section shall not be construed to permit EWU to terminate this Contract in order to acquire similar Services from a third party.
36. **TERMINATION PROCEDURES** - Upon termination of this Contract, EWU, in addition to any other rights provided in this Contract, may require Contractor to deliver to EWU any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

EWU shall pay to Contractor the agreed upon price, if separately stated, for completed work and services accepted by EWU, and the amount agreed upon by Contractor and EWU for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by EWU, and (iv) the protection and preservation of property, unless the termination is for default, in which case EWU shall determine the extent of the liability of EWU. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. EWU may withhold from any amounts due Contractor such sum as EWU determines to be necessary to protect EWU against potential loss or liability.

The rights and remedies of EWU 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 EWU, Contractor shall:

- A. Stop work under the 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 the Contract that is not terminated;
- C. Assign to EWU, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case EWU 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 Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
  - E. Transfer title to EWU and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the Contract had been completed, would have been required to be furnished to EWU;
  - F. Complete performance of such part of the work as shall not have been terminated by EWU; and,
  - G. Take such action as may be necessary, or as the Agent 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 EWU has or may acquire an interest.
37. **THIRD PARTIES** - Nothing contained in this Contract is intended to create, nor shall be construed to create, any right in any third party. Nor shall any third party have any right to enforce the terms of this Contract.
38. **TREATMENT OF ASSETS** - Title to all property furnished by EWU shall remain EWU's. Title to all property furnished by Contractor, for the cost of which Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in EWU upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in EWU 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 EWU in whole or in part, whichever first occurs.
- A. Any property of EWU furnished to Contractor shall, unless otherwise provided herein or approved by EWU, be used only for the performance of this Contract.
  - B. Contractor shall be responsible for any loss or damage to property of EWU that results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain and administer that property in accordance with sound management practices.
  - C. If any EWU property is lost, destroyed or damaged, Contractor shall immediately notify EWU and shall take all reasonable steps to protect the property from further damage.
  - D. Contractor shall surrender to EWU all property of EWU prior to settlement upon completion, termination or cancellation of this Contract.
  - E. All reference to Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.
39. **U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL** - EWU complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. Compliance with OFAC payment rules ensures that EWU does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.
- Prior to making payment to individuals or organizations, EWU will download the current OFAC SDN file and compare it to EWU and statewide vendor files. In the event of a positive match, EWU reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. EWU will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.
40. **WAIVER** - Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of EWU.