



## **Eastern Washington University**

**Solicitation Type:** Request for Proposals (RFP)

**EWU Reference #:** RFP 25-AS01

**Solicitation Title:** Housing and Residential Life P3  
Consultation Services

**Proposal Due Date:** August 30, 2024

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

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# 1. INTRODUCTION

## 1.1. PURPOSE AND BACKGROUND

The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified firms to evaluate Public-Private Partnership (PPP) options aimed at enhancing Eastern Washington University's housing system. The evaluation will focus on identifying and assessing potential PPP opportunities that align with the university's strategic goals and financial objectives. The selected firm will provide comprehensive analysis and recommendations to guide the university in determining the feasibility and benefits of implementing PPP initiatives within its housing infrastructure. The analysis should also include recommendations regarding the impact of contracted versus institutional dining services on PPP opportunities.

### **EWU Profile**

EWU is a regional, comprehensive public university located in Cheney and Spokane, Washington, with programs offered throughout the state and online. EWU's 300-acre main campus is located in Cheney, a community of 11,000 residents, and is just 17 miles from Washington's second largest city, Spokane. The headcount for fall of 2023 for the Cheney campus was 6,794 students.

Approximately 1,300 students currently live on campus in four operational residence halls and two apartment complexes. The residence hall population is predominantly first-year students, while the apartment population is a mix of students returning to campus and transfers. Three residence halls are currently not in use. The total bed capacity for the four operational residence halls is approximately 1,300 and 190 for the apartment complexes. Information about the current housing inventory is available on EWU's Housing & Residential Life website at [www.ewu.edu/housing](http://www.ewu.edu/housing).

**Mission:** Eastern Washington University provides an inclusive, equitable, and transformative learning experience, driving the pursuit of knowledge with affordable academic excellence.

**Vision:** Eastern Washington University provides an education rooted in the liberal arts, designed to address the unique challenges and opportunities facing the region. Characterized by a student-centered focus and opportunities for applied learning in high-demand fields, this education creates upward social mobility and intellectual growth for our students that supports a healthy, sustainable, and economically successful region.

### **Value Statements**

**Academic Excellence:** As a community of learners, we pursue truth and advance knowledge through creative works, research, and scholarship. Our student-centered education provides excellent teaching, dynamic conversations, and a robust intellectual experience both inside and outside the classroom. We provide applied learning opportunities to prepare students for future success, invest in our workforce and create opportunities for professional growth for students, faculty and staff.

**Accessibility:** Eastern Washington University strives to create a more inclusive, obtainable, and equitable college education.

**Belonging Through Justice, Equity, Diversity and Inclusion:** We are committed to building an inclusive, supportive, and equitable university community. We strive to integrate the principles of justice, equity, diversity, and inclusion into all university operations, fostering an environment that nurtures a sense of belonging among all members of the community. Students, staff, and faculty, are seen, understood, and appreciated for the talents they bring to our educational community.

Regional Impact and Regional Contribution: We promote economic vitality and regional success through scholarly research, dedicated service, and educational programs that meet regional workforce needs in high-demand fields. When combined with our commitment to a liberal arts education, we enhance social mobility, inclusivity, and the well-being of our community while remaining nimble to its ever-changing demands.

Student Success: We embrace all students. Students' needs are complex, and student success requires student engagement and positive outcomes. We are committed to supporting all our students with a focus on creating conditions informed by the needs of our first-generation, low-income, and other structurally marginalized students.

Sustainability: We are leaders committed to sustainability as a balance between the needs of the environment, the needs of the economy, and equitable outcomes for current and future generations

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

EWU's Housing and Residential Life office is seeking proposals for a firm to provide analyses that will help determine the best course of action for EWU Housing and Residential Life, whether it be partnering with a third-party developer or financing projects internally. We will require the selected firm to aid in researching the feasibility of Public-Private Partnerships (P3), educate EWU about the various types of P3 arrangements, and aid EWU in reaching a decision regarding the future of Housing and Residential Life facilities. Examples of work expected include:

1. **Evaluate Feasibility:** Assess the viability of P3 as a means to enhance EWU's housing system, considering financial, operational, and strategic implications.
2. **Optimize Financial Resources:** Explore P3 models that offer cost-effective solutions for financing, constructing, maintaining, and managing housing facilities while minimizing financial risk for the university.
3. **Ensure Student Satisfaction:** Prioritize student-centric outcomes by recommending P3 options that enhance living conditions, amenities, and overall satisfaction within EWU's housing system.
4. **Align with Institutional Goals:** Support EWU's broader institutional objectives by proposing P3 arrangements that align with sustainability goals, campus development plans, and long-term operational strategies.

The scope of this RFP includes, but is not limited to:

1. **P3 Feasibility Study:** Conduct a comprehensive assessment to determine the feasibility of implementing P3s within EWU's housing system, considering legal, financial, regulatory, and operational factors. Dining options and delivery methods should be included in the assessment.
2. **Market Analysis:** Analyze the local and regional market conditions to identify potential private sector partners interested in collaborating with EWU on housing projects.
3. **Risk Assessment:** Evaluate potential risks associated with P3 arrangements and propose risk mitigation strategies to safeguard EWU's interests.
4. **Financial Modeling:** Develop detailed financial models to compare the costs and benefits of various P3 scenarios, including upfront capital requirements, ongoing operational expenses, revenue streams, and financial returns.
5. **Stakeholder Engagement:** Facilitate engagement with key stakeholders, including university administration, student representatives, faculty, and community members, to gather input and ensure alignment with EWU's strategic priorities. At least two engagements must occur on the Cheney campus.
6. **Recommendations:** Provide clear and actionable recommendations based on the findings of the feasibility study and market analysis, outlining preferred P3 options and implementation strategies.

7. Documentation: Prepare a comprehensive report summarizing the evaluation process, findings, recommendations, and supporting documentation to guide EWU in making informed decisions regarding P3 initiatives for its housing system.

Preferred proposal format:

1. Introduction and executive summary of no more than one page.
2. Listing of three to five customer references who can evaluate work that has been completed by the firm in the past five years, preferably institutions of comparable size.
3. Description of your proposed approach to assessing need on campus, determining P3 viability, educating campus stakeholders, making recommendations for the future of EWU Housing and Residential Life and consultation for selecting a P3 partner.
4. Proposed timeframe for the completion of the various elements of the project.
5. Cost.

### 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. Minimum of five years working with P3s for residential facilities at institutions of higher education.
3. 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 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 this solicitation ([Exhibit A](#)).
4. Does not require its employees to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers ([Exhibit A](#)).

### 1.4. PERIOD OF PERFORMANCE

The period of performance of any Contract resulting from this RFP is tentatively scheduled to begin on date of execution and end after final recommendations are provided to EWU Housing and Residential Life. Recommendations must be provided to EWU on or before June 30, 2025.

EWU reserves the right at its sole option to extend the Contract for consultation in the development of a RFP and selection of, and negotiation with a P3 partner.

### 1.5. DEFINITIONS

Definitions for the purposes of this RFP include:

1. **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.
2. **Contractor** –
  - A. Individual or company interested in the RFP and that may or does submit a Proposal in order to attain a Contract with EWU.
  - B. Individual or company whose Proposal has been accepted by EWU and is awarded a fully executed, written Contract.
3. **EWU** – The agency of the State of Washington that is issuing this RFP.
4. **Proposal** – A formal offer submitted in response to this solicitation.
5. **Proposer** – Individual or company that submits a Proposal in order to attain a Contract with EWU.

- 6. **Request for Proposals (RFP)** – Formal solicitation 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	Annika Scharosch
Email Address	ascharosch@ewu.edu
Mailing Address	EWU Procurement & Contracts 218 Tawanka Hall Cheney, WA 99004-2456

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 SOLICITATION ACTIVITIES**

Issue RFP	August 12, 2024
Question & Answer Period	August 19-23, 2024
Issue Last Addendum to RFP	August 23, 2024
Proposal Due Date	August 30, 2024
Evaluate Proposals	September 2 – September 9, 2024
Conduct Oral Interviews with Finalists, if required	September 16 – September 20, 2024
Announce Apparent Successful Contractor and Send Notification via WEBS to Unsuccessful Proposers	September 23, 2024
Negotiate Contract	September 23 – September 30, 2024
Begin Contract Work	October 1, 2024

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 August 30, 2024.

Proposals must be submitted electronically as an attachment to an email to [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), 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. Pursuant to 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 Chapter 42.56 RCW.

Any information in the Proposal that the Contractor desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, 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 Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, EWU shall maintain the confidentiality of the Contractor's information per the court order.

**Any contract entered into with EWU is not considered proprietary information, is subject to public disclosure, and may be posted on EWU's website.**

#### **2.5. REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via WEBS.

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 Washington State Office of Minority and Women's Business Enterprises (OMWBE) or Washington State Department of Veteran's Affairs (DVA). 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 OMWBE or the DVA.



**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 solicitation 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](#). **Contractor may submit its general License or University-specific Agreement as part of its Proposal for EWU to review. If there is a conflict between the terms contained in EWU's terms and conditions and Contractor's Agreement, Contractor must either agree to EWU's terms or submit exceptions as allowed in the Certifications and Assurances form, [Exhibit A](#) to this RFP.** All exceptions to the Contract terms and conditions must be submitted as an attachment to [Exhibit A](#), Certifications and Assurances form. EWU will review requested exceptions and accept or reject the same **at its sole discretion.**

**2.11. INTERLOCAL CONTRACTING**

EWU is a member of the Washington State Institutions of Public Higher Education (WIPHE) and is aware that other WIPHE members may be interested in purchasing the product(s) included in this solicitation. Therefore, pursuant to the Interlocal Cooperation Act, [Chapter 39.34 RCW](#), all WIPHE members will be eligible to utilize the Contract(s) awarded as a result of this solicitation, if all parties are willing. The Contractor must complete [Exhibit B](#) as part of the Proposal.

**2.12. 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.

**2.13. NO OBLIGATION TO CONTRACT**

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

**2.14. 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.

**2.15. 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.

**2.16. 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.
- E. Cyberliability Insurance: See Exhibit D for details.

### **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 Chapter 48.18 RCW (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 Chapter 48.15 RCW (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 Chapter 48.15 RCW and Chapter 284-15 of the Washington Administrative Code (WAC).

- 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](#)) and WIPHE Participation ([Exhibit B](#));
2. Technical Proposal;
3. Management Proposal; and,
4. 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, Certifications and Assurances ([Exhibit A](#)) and WIPHE Participation ([Exhibit B](#)) 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. TECHNICAL PROPOSAL (SCORED)

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

1. **Project Approach/Methodology** - Include a complete description of the Contractor's proposed approach and methodology for the project. This section should convey Contractor's understanding of the proposed project.
  2. **Work Plan** - Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the Technical Proposal must contain sufficient detail to convey to members of the evaluation team the Contractor's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of EWU staff. The Contractor may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
  3. **Project Schedule** - Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
  4. **Outcomes and Performance Measurement** - Describe the impacts/outcomes the Contractor proposes to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to EWU.
  5. **Risks** - The Contractor must identify potential risks that are considered significant to the success of the project. Include how the Contractor would propose to effectively monitor and manage these risks, including reporting of risks to EWU's Contract Administrator.
  6. **Deliverables** - Fully describe deliverables to be submitted under the proposed Contract. Deliverables must support the requirements set forth in Section 1.2, Objectives and Scope of Work.
1. **MANAGEMENT PROPOSAL (SCORED/MANDATORY/OPTIONAL)- Project Management (SCORED)**
    - A. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any Subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of the potential Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
    - B. **Staff Qualifications/Experience**
      - i. Identify staff, including Subcontractors, who will be assigned to the potential Contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project.
      - ii. Provide resumes' for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information.
      - iii. The Contractor shall use best efforts to ensure that staff identified in its Proposal will actually perform the assigned work. Any staff substitution must have the prior approval of EWU.

- C. **Maintenance & Support Team Structure/Internal Controls** – Provide a description of the software maintenance and support services. Detail any applicable help desk services, online support, error and malfunction services, and on-call/on-site support.

**2. Experience of the Contractor (SCORED)**

- A. Indicate the experience the Contractor and any Subcontractors have that relate to their ability to provide the services as required for this RFP.
- B. Indicate other relevant experience that indicates the qualifications of the Contractor, and any Subcontractors, for the performance of the potential Contract.
- C. Include a list and description of projects of similar size and scope over the last five (5) years that relate to the Contractor's ability to perform the services needed under this RFP.

**3. 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.

**4. References (MANDATORY)**

- A. List names, addresses, telephone numbers, and fax numbers/email addresses of three (3) business references 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.

**5. OMWBE & DVA Certification (OPTIONAL AND NOT SCORED)**

- A. Include proof of certification issued by OMWBE if certified minority-owned firm and/or women-owned firm(s) will be participating on this project or certification from the DVA if veteran-owned firms will be participating on this project. For information, Contractors may contact OMWBE or the DVA.

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

- A. Indicate use of environmentally safe products and processes, or commitment to sustainability issues.

**3.3. COST PROPOSAL (SCORED)**

The evaluation process is designed to award this solicitation 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 which 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.

Costs for Subcontractors are to be broken out separately. Please note if any Subcontractors are certified by OMWBE and/or the DVA.

**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>Technical Proposal</b>	<b>40 Points</b>	<b>40%</b>
Project Approach/Methodology	5 Points	
Quality of Work Plan	15 Points	
Project Schedule	5 Points	
Project Deliverables	15 Points	
<b>Management Proposal</b>	<b>30 Points</b>	<b>30%</b>
Project Team Structure/Internal Controls	8 Points	
Staff Qualifications/Experience	7 Point	
Maintenance & Support Team Structure/Internal Controls	8 Points	
Experience of the Contractor	7 Point	
<b>Cost Proposal</b>	<b>30 Points</b>	<b>30%</b>
<b>Total</b>	<b>100 Points</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 scores from the written evaluation and the oral presentation combined together will determine the Apparent Successful Contractor.

#### **4.4. NOTIFICATION TO PROPOSERS**

EWU will notify all Proposers of their selection via WEBS 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 Contractors 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 WEBS.
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 to 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: PROPOSER CERTIFICATION

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

\_\_\_\_\_  
Title

**EXHIBIT B: WIPHE PARTICIPATION**

EWU is a member of the Washington State Institutions of Public Higher Education (WIPHE) and is aware that other WIPHE members may be interested in purchasing the product(s) included in this solicitation. Therefore, pursuant to the Interlocal Cooperation Act, [Chapter 39.34 RCW](#) , all WIPHE members will be eligible to utilize the Contract awarded as a result of this solicitation, if all parties are willing. Below is a listing of WIPHE members who may desire to utilize the Contract resulting from this solicitation.

Contractors should be aware that if other WIPHE members elect to utilize the Contract awarded as a result of this solicitation they may have different administrative or delivery requirements. It will be the responsibility of the participating WIPHE members to negotiate specific clauses with the Contractor. The modifications should not impair or substantially change the original Contract.

WIPHE members will issue separate purchase orders if they acquire items pursuant to the Contract awarded as a result of this solicitation. A WIPHE Contract number will be assigned to the resulting Contract which must be referenced on all order documents.

**WIPHE Members:**

**FOUR YEAR UNIVERSITIES:**

Central Washington University	The Evergreen State College	Washington State University
Eastern Washington University	University of Washington	Western Washington University

**COMMUNITY AND TECHNICAL COLLEGES:**

Bates Technical College	Everett Community College	SBCTC
Bellevue College	Grays Harbor College	Seattle Central College
Bellingham Technical College	Green River Community College	Shoreline Community College
Big Bend Community College	Highline College	Skagit Valley College
Cascadia College	Lake Washington Institute of Technology	South Puget Sound Community College
Centralia College	Lower Columbia College	South Seattle College
Clark College	North Seattle College	Tacoma Community College
Clover Park Technical College	Olympic College	Walla Walla Community College
Columbia Basin College	Peninsula College	Wenatchee Valley College
Community Colleges of Spokane	Pierce College	Whatcom Community College
Edmonds Community College	Renton Technical College	Yakima Valley Community College

**Contractor agreement to sell items included in this solicitation to other WIPHE members at prices and discounts offered for this solicitation. Please check one of the following:**

- I/we **AGREE** to sell to WIPHE members, at same prices and discounts, with the following exceptions, if any (attach additional pages as necessary)
- I/we **DO NOT AGREE** to sell to other WIPHE members

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## EXHIBIT C: SERVICES CONTRACT FORMAT

### SERVICES CONTRACT

This Contract is made and entered into by and between Eastern Washington University (“EWU”), located at 526 5<sup>th</sup> St, Cheney, WA 99004 and the below named firm (“Contractor”).

Name:  
Address:  
City, State, Zip:

Email:  
Phone:  
Fax:

EWU and Contractor may be individually referred to as “Party” or collectively referred to as “Parties.”

#### PURPOSE

The purpose of this Contract is to evaluate what Public-Private Partnership options may exist that would benefit the campus, our students and the residential experience. The analyses should address a wide range of issues related to areas of responsibility, market conditions, financial considerations, risk transfer and its associated costs.

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part thereof, EWU and Contractor mutually agree as follows:

#### 1. SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this Contract, the nature of the working relationship between EWU and Contractor, and specific obligations of both Parties.
- B. Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below and as included in EWU’s Request for Proposals (RFP) #[INSERT NUMBER] (Exhibit B), Contractor’s Proposal dated [INSERT DATE] (Exhibit C), and in this Contract. The RFP and its attachments, as well as Contractor’s Proposal, are herein incorporated as terms of this Contract. Specifically, Contractor will:
  - i. Identify all tasks, work elements and objectives of the Contract, and timetables by which major parts of the work are to be completed.
- C. Contractor shall produce the following written reports or other written documents (deliverables) by the dates indicated below:
  - i. Identify all written reports or other written documents (deliverables) of the Contract, and dates by which these reports or documents are to be completed.

All written reports required under this Contract must be delivered to the Contract Administrator in accordance with the schedule above.

#### 2. PERIOD OF PERFORMANCE

- A. The period of performance under this Contract will be from October 1, 2024 or date of execution, whichever is later, through June 30, 2025, unless sooner terminated or extended as provided herein.
- B. EWU reserves the right at its sole option to extend the Contract for [INSERT NUMBER] additional [INSERT NUMBER]-year periods; not to exceed a total of [INSERT NUMBER] years ending [INSERT DATE].

#### 3. COMPENSATION

- A. Total compensation payable to Contractor for satisfactory performance of the work under this Contract shall not exceed \$[150,000]. Payment for satisfactory performance of the

work shall not exceed this amount unless the Parties mutually agree to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded.

- B. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:
  - i. List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc.
- C. Contractor is required to collect and pay Washington State sales and use taxes, as applicable. Contractor is also required to pay all necessary taxes of any foreign country where they do business, as well as any necessary taxes, premiums, licenses, and permits necessary to do business in the United States and the State of Washington.
- D. Contractor is responsible for all costs incurred in performing services under this Contract, including, but not limited to, certifications, training, telephone, internet, computer, and copying costs. Contractor will not be reimbursed or paid for any miscellaneous, routine overhead expenses incurred in the normal process of performing services under this Contract such as, but not limited to, telephone costs, mail, clerical supplies, computer, copying, fax, and transportation.
- E. Reimbursable Expenses. If, at EWU's written request, Contractor is required to travel to the EWU campus, EWU may reimburse Contractor for travel costs under this provision. Travel within a 50-mile radius of EWU is not a reimbursable expense. Travel between a 50- and 350-mile radius may be negotiated as an additional service at not greater than the current state rate set by the Office of Financial Management, <http://www.ofm.wa.gov/policy/10.htm>. Any cost reimbursement for travel beyond the 350-mile radius requires written justification and prior approval from EWU. Per Diem rates shall be in accordance with current Washington State Office of Financial Management's Guidelines. Contractor must follow EWU protocols and procedures for requesting travel reimbursement. The maximum amount to be paid to Contractor for authorized expenses shall not exceed 10% of contracted amount, which is included in the Contract total above.

#### 4. BILLING PROCEDURES AND PAYMENT

- A. EWU will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Contract Administrator not more often than monthly.
  - i. NOTE: Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Contract, payment at conclusion of the Contract, etc.
- B. The invoices shall describe and document to EWU's satisfaction a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract reference number C00XXXX.
- C. Contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of \$50.00 or more when requesting reimbursement.
- D. Payment shall be considered timely if made by EWU within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by Contractor.
- E. EWU may, in its sole discretion, terminate the Contract or withhold payments claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.
- F. No advance payment shall be made for the products and services furnished by Contractor under this Contract.

#### 5. CONTRACT MANAGEMENT

- A. EWU will appoint a single point of contact that will be the Contract Administrator for this Contract and will provide Contract oversight. The Contract Administrator will be the principal contact for Contractor for business activities under this Contract. EWU will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.
- B. Contractor shall:
  - i. Competently and efficiently supervise and coordinate the implementation and completion of all Contract requirements specified herein.

- ii. Identify Contractor's Authorized Representative, who will be the principal point of contact for EWU concerning Contractor's performance under this Contract.
  - iii. Immediately notify the Contract Administrator in writing of any change of the designated Authorized Representative assigned to this Contract.
  - iv. Be bound by all written communications given to or received from Contractor's Authorized Representative.
6. **LEGAL NOTICES** - Any notice or demand or other communication required or permitted to be given under this Contract or applicable law will be effective only if it is in writing and signed by the applicable Party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the Parties at the addresses, email addresses, and fax numbers below.

**CONTRACTOR**

Contact Name  
 Contact Title  
 Address  
 City, State, Zip

Email:  
 Phone:  
 Fax:

**EWU**

[INSERT NAME]  
 Contracts Specialist 2  
 218 Tawanka Hall  
 Cheney, WA 99004-2456

Email: [contracts@ewu.edu](mailto:contracts@ewu.edu)  
 Phone: (509) 359-2253  
 Fax: (509) 359-7984

Notices will be effective upon receipt. The notice address as provided herein may be changed by written notice given as provided above.

7. **INSURANCE**

A. **General Requirements**

- i. Contractor shall, at its own expense, obtain and keep in force insurance as follows during the Period of Performance of this 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 this Contract's termination.
- ii. 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.
- iii. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by EWU.

B. **Specific Requirements**

- i. **Commercial General Liability Insurance:** Contractor shall at all times during the Period of Performance of this Contract, carry and maintain commercial general liability insurance and, if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of 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 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

- ii. Professional Liability (Errors and Omissions) Insurance: Limits of liability shall not be less than \$1 million per claim and \$2 million annual aggregate.
- iii. Business Auto Policy: In the event that services delivered pursuant to this 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 this service by 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.

- iv. Employer's Liability (Stop Gap): 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 Contractor or their employees for services performed under the terms of this Contract.
- v. Cyberliability Insurance: See Exhibit D for details.

**C. Additional Insurance Provisions**

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

- i. 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.
- ii. Notice of Policy Cancellation/Non-Renewal
  - 1. For insurers subject to Chapter 48.18 RCW (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 this Contract. Written notice shall include the affected Contract reference number.

2. For insurers subject to Chapter 48.15 RCW (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 this Contract. Written notice shall include the affected Contract reference number.
3. If cancellation on any policy is due to non-payment of premium, a written notice shall be given to EWU's Risk Manager 10 calendar days prior to cancellation. Written notice shall include the affected Contract reference number.
- iii. Identification: Policies and certificates of insurance shall include the affected Contract reference number.
- iv. 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 Chapter 48.15 RCW and Chapter 284-15 of the Washington Administrative Code (WAC).
- v. Excess Coverage: The limits of all insurance required to be provided by 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 Contractor from liability in excess of such limits.
- vi. Limit Adjustments: EWU reserves the right to increase or decrease limits as appropriate.

D. Industrial Insurance Coverage: Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If 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 this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor.

8. **ASSURANCES** - EWU and Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.
9. **ORDER OF PRECEDENCE** - Each of the exhibits listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
  - A. Applicable federal and State of Washington statutes and regulations
  - B. Special Terms and Conditions as contained in this Contract
  - C. Exhibit A – General Terms and Conditions
  - D. Exhibit D- Data Sharing Agreement
  - E. Exhibit B – EWU's RFP #[INSERT NUMBER]
  - F. Exhibit C – Contractor's Proposal dated [INSERT DATE]
  - G. Any other provision, term or material incorporated herein by reference or otherwise incorporated
10. **ENTIRE AGREEMENT** - This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the Parties. No other statements or representations, written or oral, shall be deemed a part hereof.
11. **CONFORMANCE** - If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

12. **ELECTRONIC SIGNATURES** - A manually signed copy of this Contract, Terms and Conditions or any amendments or other transaction documents delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

13. **APPROVAL** - This Contract shall be subject to the written approval of EWU's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both Parties.

THIS CONTRACT, consisting of [INSERT NUMBER] pages and [INSERT NUMBER] attachment(s), is executed by the persons signing below who warrant that they have the authority to execute the Contract.

**CONTRACTOR NAME**

Eastern Washington University

\_\_\_\_\_  
Signature Date  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature Date  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

## SERVICES CONTRACT: 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. **ADVANCE PAYMENT PROHIBITED** - No advance payment shall be made for the products and services furnished by Contractor under this Contract.
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** - Contractor shall not assign or otherwise transfer its obligations or any claim arising under this Contract without the prior written consent of EWU. Such consent will not be unreasonably withheld. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to assign or otherwise transfer its obligations under this Contract. Violation of this provision may be considered a material breach and be grounds for Contract termination. Assignment or transfer of Contract shall not relieve the Contractor from its responsibilities and obligations under the Contract.
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**

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. The terms and conditions under which this Confidential Information must be transmitted, stored, and maintained are contained in Exhibit D (Data Sharing Agreement).

To the extent consistent with Chapter 42.56 RCW, the Public Records Act, EWU shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a public records request is made to view Contractor's proprietary information, EWU will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, EWU will release the requested information on the date specified. EWU's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as EWU retains Contractor's information in EWU records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

9. **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.

10. **DISALLOWED COSTS** - Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

11. **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.

12. **DUPLICATE PAYMENT-** EWU shall not pay Contractor, if 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.

13. **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.

14. **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.

15. **INDEMNIFICATION/HOLD HARMLESS** - To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless EWU, and all officials, agents and employees of EWU, from and against all claims for bodily injury, death or damage to property arising out of or resulting from the performance, or failure of performance, of this 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's obligations to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor or its employees.

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 shall be required to indemnify, defend, and hold harmless EWU only to the extent claim is caused in whole or in part by negligent, reckless or willful acts or omissions of Contractor, its 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.

16. **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.

17. **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.

18. **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.

**19. MWBE & VOB PARTICIPATION**

- A. Contractor agrees it will undertake affirmative action efforts to utilize Minority & Women Owned Business Enterprises (“MWBE”) and Veteran Owned Business (“VOB”) either certified by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE), Washington State Department of Veterans Affairs (DVA), 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 and VOB firms.
  - ii. Providing MWBEs and VOBs that express interest with adequate and timely information about the scope and requirements of this Contract.
- B. 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 and VOB firm utilized and the totals earned in each category.

**20. 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/religion, color, national origin, citizenship or immigration status, marital or familial status, sex, sexual orientation, gender identity, pregnancy, 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 Chapter 49.60 RCW.
- 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 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 terminated 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 30 of this Contract governing Termination for Cause.

**21. OWNERSHIP/RIGHTS IN DATA** - EWU and Contractor agree that all data and work products (collectively called “Work Product”) produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by EWU. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not

limited to, discoveries, formulas, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such work product.

If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to EWU the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as EWU may deem necessary to secure for EWU the rights pursuant to this section.

Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of EWU. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to EWU with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise EWU at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. EWU shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. EWU shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

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 all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to MWBE and VOB participation, protection and use of EWU's Confidential Information, and accounting procedures and practices which 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 final resolution of all litigation, claims, or audit findings involving the records.

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 Washington State Auditor's Office, the Washington State 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 provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.
27. **SITE SECURITY** - While on EWU's 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 a 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 shall be responsible to ensure that all requirements of this Contract flow down to any and all Subcontractors. 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 it is determined, after due notice and examination, that any party to this Contract 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 Contract 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, in whole or in part, 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 materials, supplies, services and/or equipment from a third party.
36. **TERMINATION PROCEDURES** - Upon termination of this Contract and in addition to any other rights provided in this Contract, EWU 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

materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which 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 termination notice, and except as otherwise expressly directed in writing by EWU, Contractor shall:

- A. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
- C. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
- D. Assign to EWU, in the manner, at the times, and to the extent directed by EWU, all of the rights, title, and interest of 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;
- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of EWU to the extent EWU may require, which approval or ratification shall be final for all the purposes of this clause;
- F. Transfer title to EWU and deliver in the manner, at the times, and to the extent directed by EWU any property which, if the Contract had been completed, would have been required to be furnished to EWU;
- G. Take such action as may be necessary, or as EWU may direct, for the protection and preservation of the property related to this Contract, which is in the possession of 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 with EWU. 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.

Contractor shall be responsible for damages as a result of any loss or damage to property of EWU which results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

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.

Contractor shall surrender to EWU all property of EWU prior to settlement upon completion, termination, or cancellation of this Contract.

Title to all property furnished by Contractor, the cost for 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 and acceptance by EWU. 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.

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** - Failure or delay of EWU to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or EWU's acceptance of or payment for materials, supplies, services and/or equipment, shall not release Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of EWU to insist upon the strict performance of the entire agreement by Contractor. In the event of any claim for breach of Contract against Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by EWU of any existing or future right and/or remedy available by law.
41. **DEBARMENT/EXCLUSION** – Contractor represents and warrants that it is not excluded or debarred by any federal agency or the Washington Department of Enterprise Services from participating in a grant or contract, and it is not, to the best of Contractor's knowledge, under investigation for such exclusion or debarment. Contractor will notify EWU immediately if there are any changes in status under this paragraph.



## EXHIBIT D: DATA SHARING AGREEMENT

**THIS DATA SHARING AGREEMENT (DSA)** is entered into by and between Eastern Washington University (“EWU”) and the **[INSERT CONTRACTOR NAME AND/OR INSERT CONTRACTOR ABBREVIATION (“Contractor”)]**. The terms of this Agreement apply to all individuals or other entities performing service(s) under this Agreement, including employees, officers, contractors, subcontractors, vendors, or agents of the parties.

### 1. PURPOSE

The purpose of this DSA is to provide terms and conditions under which EWU will allow the restricted use of its data and/or Confidential Information by Contractor, and under which Contractor may receive and use such data and/or Confidential Information. This DSA shall govern the access, use, storage, copying, creation, resulting derived data, and distribution of EWU data by Contractor. This DSA ensures that EWU data is provided, protected, and used only for purposes authorized by this DSA and state and federal law governing such use.

The data to be shared under this DSA is shared **[in order to fulfill the terms of EWU Request for Proposals (“RFP”) #XX-XX]** or **[describe purpose and authority for sharing]**.

### 2. DEFINITIONS

“**Agreement**” means this Data Sharing Agreement, including all documents attached or incorporated by reference. “Data Sharing Agreement,” “DSA,” and “Agreement” are all used interchangeably.

“**Contractor**” means the firm, provider, organization, individual or other entity receiving data from EWU under this Agreement, and shall include all employees, officers, contractors, subcontractors, vendors, or agents of Contractor.

“**Confidential Information**” means information that may be exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other state or federal law. Confidential Information includes, but is not limited to, Category 3 and 4 Information, personal information as defined below and in RCW 19.255.010 and RCW 42.56.590, student education records as defined below and in the Family Educational Rights and Privacy Act, consumer information as defined in 16 C.F.R. § 682.1, 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 information listed above.

“**Data**” means information shared by EWU with Contractor and may include Category 1, 2, 3, or 4 level data as defined as follows:

Category 1 – Public Information. Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Category 2 – Sensitive Information. Sensitive information may not be specifically protected from disclosure by law and is for official use only. Sensitive information is generally not released to the public unless specifically requested.

Category 3 – Confidential Information. Confidential information is information that is specifically protected from disclosure by law. It may include but is not limited to:

- a. Personal Information about individuals as defined below, regardless of how that information is obtained;
- b. Information concerning employee personnel records;
- c. Information regarding IT infrastructure and security of computer and telecommunications systems;

d. Student education records protected by FERPA.

Category 4 – Confidential Information Requiring Special Handling. Confidential information requiring special handling is information that is specifically protected from disclosure by law and for which:

- a. Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements;
- b. Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

**“Data Access”** refers to rights granted to directly connect to EWU and/or Contractor systems, networks and /or applications combined with required information needed to implement these rights.

**“Data Transmission”** refers to the methods and technologies used to move a copy of the data between systems, networks and/or employee workstations.

**“Data Storage”** refers to the location where data is maintained in a state of rest, which can include cloud-based storage, server-based storage on-site or at a state agency or third-party contractor storing data on behalf of a state agency, local device storage (including an employee workstation, laptop, or private mobile device), and/or any other form of portable electronic storage media (including CDs, flash drives, portable hard drives, etc.).

**“Data Encryption”** refers to ciphers, algorithms or other encoding mechanisms that will encode data to protect its confidentiality. Data encryption can be required during data transmission or data storage depending on the level of protection required for this data.

**“Education Records”** are those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. See FERPA regulations, 34 C.F.R. § 99.3.

**“FERPA”** means The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, which applies to Education Records of individual students held by the parties.

**“Institution Data”** refers to data that are provided by EWU to Contractor pursuant to this Agreement and are maintained, accessed, stored, used, or analyzed for the purposes described herein. Institution Data may include but is not limited to Confidential Information and Personal Information. “Institution Data” and “EWU Data” are used interchangeably.

**“Personal Information”** means information or data identifiable to any person, including but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver’s license numbers, other identifying numbers, and any financial identifiers.

**“Subcontractor”** means any person or entity appointed by or on behalf of Contractor to carry out any portion of the work, or in the alternative, any person or entity who is performing services, excluding technology hosting services with no data access, pursuant to a contract or data sharing agreement with Contractor.

### **3. TERM AND EFFECTIVE DATE**

This DSA shall commence on the last date of execution and shall continue until the expiration of [INSERT CONTRACT # or date of the end of the underlying agreement], with the option to extend upon mutual written agreement of the parties. If specified within the language of the provision or required by law, provisions of this DSA may survive the termination of this agreement.

### **4. DESCRIPTION OF DATA TO BE SHARED**

**(NOTE: Include a description of the data that is requested, including classification/category of data, data elements, time frames for data disclosure or exchange (both when and for how long) and format of the data, as necessary. Specify if the data provided can be linked to other data and under what conditions, as necessary. For example:**

<b>Check if applicable</b>	<b>Type of Data</b>
	Student names
	Student identification numbers or social security numbers
	Student contact information (address, cell phone number)
	Student medical information
	Any combination of information that would make a student's identity easily traceable
	Sensitive employee information (e.g. social security number, personal address or cell phone number, demographic data such as race and gender)
	Employee medical information
	Sensitive financial information (bank account number, credit card number, etc.)
	Other:

Data will be shared as needed to facilitate the performance of work under **CONTRACT #**.

## **5. AUTHORIZED USES**

This Agreement does not constitute a release of EWU data and/or Confidential Information for Contractor's discretionary use and such data may be accessed and used only to carry out the purposes described in this DSA. Any ad hoc analyses or other use of the data, not specified in this DSA, is not permitted.

Specifically, Contractor shall not access or use the provided Confidential Information for any commercial or personal purpose, the provided Confidential Information shall not be linked with other data sources, and Contractor is not authorized to update or change any data in EWU's systems. Violations of these provisions shall be cause for immediate termination of this DSA.

## **6. AUTHORIZED USERS**

Contractor shall not disclose, in whole or in part, the data provided by EWU to any individual or entity, unless this DSA specifically authorizes the disclosure. Data may be disclosed only to persons and entities that have the need to use the data to achieve the stated purposes of this DSA. As such, 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 Agreement, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without EWU's express written consent or as provided by law.

Contractor must ensure that all employees or subcontractors who will have access to the data described in this Agreement (including both employees who will use the data and IT support staff) are instructed and made aware of the use restrictions and protection requirements before gaining access to the data identified herein. Contractor will also instruct and make any new employee aware of the use restrictions and protection requirements before they gain access to the data. Individuals will access data only for the purpose of this Agreement.

Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement that meets or exceeds the standards in this DSA. If data access is to be provided to a Subcontractor under this DSA, it will only be for the specific purpose and uses authorized by EWU and Contractor must include all of the data security terms, conditions and requirements set forth in this DSA in any such Subcontract. In no event will 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 responsibilities.

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 re-disclosure of personally identifiable information from education records.

State and federal laws may prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines.

## **7. DATA ACCESS AND TRANSMISSION**

*Describe how data will be accessed and transmitted. For example:* [EWU and Contractor have agreed to use a software tool to encrypt data prior to transmission and during data storage. The tool is: [INSERT] (Example: PKZIP PRO). The password will be transmitted separately from any data transmission event.

OR

All Confidential Information storage (data at rest) must be encrypted using only NIST or ISO approved encryption algorithms; this includes all back-up copies of Confidential Information. Any laptop or notebook computing device receiving or processing Confidential Information must be installed with end-point encryption (i.e.g full disk encryption).

OR *something else – however you intend to provide access and transmission.*

*THEN, optional language for controlling number of authorized users who have access if access is being granted to an EWU system:*

[Contractor may request access to EWU for up to [number of] Authorized Users under this DSA. Contractor must send the request for new users to [EWU contact]. Contractor must designate a Point of Contact to be the single source of access request for new users if passwords are required to access EWU data. Contractor may not use shared User IDs and passwords for use with Confidential Information or to access systems that contain Confidential Information. Contractor must ensure that only Authorized Users access and use the system(s) in this DSA, use only their own User ID and password to access the system(s), and do not allow employees or others who are not authorized to borrow a User ID or password to access any system(s). Contractor may be required to use two-factor (2FA) authentication using an EWU approved 2FA method. Any expenses associated with the selected 2FA method (e.g. hardware token) are the responsibility of the Contractor. Lost, stolen, or compromised 2FA methods must be reported immediately to the EWU contact.

Contractor must notify EWU within 5 business days whenever an Authorized User who has access to the Data is no longer employed by Contractor or whenever an Authorized User's duties change such that the user no longer requires access to the Data. Contractor's access to the systems may be continuously tracked and monitored. EWU reserves the right, at any time, to terminate Data access for an individual, conduct audits of system(s) access and use, and to investigate possible violations of this DSA and/or violations of laws governing access to Confidential Information.

## **8. DATA STORAGE, DISPOSAL AND HANDLING REQUIREMENTS**

Contractor shall have, as general duties, the obligation to exercise due care and take commercially best efforts to protect the security of data from unauthorized physical and electronic access. Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EWU's information to prevent unauthorized access to, use, or disclosure of such information. Contractor acknowledges that EWU is relying on the administrative, physical, and technical safeguards implemented by the Contractor in permitting access to Confidential Information subject to this DSA. Contractor represents and warrants that it has adopted, implemented, and shall maintain, for as long as Contractor has access to, creates, maintains, uses, or discloses EWU's Confidential Information adequate and appropriate safeguards to: (a) protect the

confidentiality and security of Confidential Information obtained from, or created on behalf of, EWU by Contractor, and (b) prevent the use of disclosure of Confidential Information other than as provided for by this DSA and applicable laws.

Contractor represents and warrants that, with regard to confidentiality, security, and integrity of EWU's Data, safeguarding the privacy rights of individuals identified within the Data, data security, data access security, data storage, and handling of data in connection with the purpose of this DSA shall be undertaken in compliance with current standards, policies, and procedures of Eastern Washington University and of the Washington State Office of the Chief Information Officer's (OCIO) current standards. These standards are available at: <https://inside.ewu.edu/it/policies-and-governance/> and <https://ocio.wa.gov>. They may be updated periodically throughout the term of this DSA. Contractor certifies that prior to receiving any data under this agreement it will be in compliance with OCIO 141.10 policies and procedures for data security and access controls to ensure the confidentiality, integrity, and availability of all data shared.

Contractor will restrict access to Confidential Information by:

- A. Allowing access only to staff that have an authorized business requirement to view the Confidential information; and,
- B. Physically securing any computers, documents, or other media containing the Confidential Information.

Contractor's administrative, physical, and technical safeguards and those of its Subcontractors, shall comply with all applicable laws, and applicable then current privacy and security guidelines and/or standards issued by the National Institute for Standards and Technology (NIST). Compliance requirements include, but are not limited to, FERPA, the European Union's General Data Protection Regulation, HIPAA, and the Federal Trade Commission's Safeguard Rules promulgated under the Gramm-Leach-Bliley Act.

Contractor must maintain all hardcopies containing Confidential Information in the United States. Contractor may not directly or indirectly (including through Subcontractors) transport or maintain any EWU data, hardcopy or electronic, outside the United States unless it has advanced written approval from EWU's Chief Information Officer.

Immediately upon expiration or termination of this Agreement or the pertinent transaction with EWU, Contractor shall, at EWU's option: (1) certify to EWU that Contractor has destroyed all Confidential Information by an EWU approved destruction method; (2) return all Confidential Information to EWU; or (3) take whatever other steps EWU requires of Contractor to protect EWU's Confidential Information. Contractor will retain no copies of Confidential Information unless required by law or accounting purposes and after providing EWU with written notification of the Confidential Information retained and the legal necessity for doing so. Paper documents containing Category 4 information must be destroyed on-site through shredding, pulping, or incineration.

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 EWU in accordance with section C and, (2) take prompt steps to prevent or mitigate possibly identify theft when Red Flags are detected.

## **9. OVERSIGHT**

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 Agreement 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 agrees that EWU will have the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance therewith, within the limits of technical capabilities.

During the term of this DSA and for six (6) years following termination or expiration of this DSA, EWU will have the right at reasonable times and upon no less than five (5) business days prior written notice to access the Contractor's records at a location within the State of Washington for the purpose of auditing and evaluating the Contractor's compliance with this DSA and applicable laws and regulations. At EWU's request or in accordance with OCIO Security Standards, Contractor may be required to obtain a third-party audit covering data security and permissible uses under this DSA.

## **10. INCIDENT RESPONSE**

Contractor shall notify EWU in writing within 48 hours 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 Contractor on the first day on which such breach is known to Contractor, including any of Contractor's employees or agents, or should reasonably have been known to Contractor to have occurred. Notification should be sent to the Contract Administrator. 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. Contractor shall be responsible for complying with all applicable state and federal requirements regarding data breach and/or unauthorized disclosure of Confidential Information. Contractor shall cooperate with all EWU efforts, including, but not limited to, (1) providing any and all information necessary to enable EWU 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.

If, in the sole judgment of EWU, notification to individuals must be made, Contractor will further cooperate and facilitate notification to required parties, which may include notification to affected individuals, the media, the Attorney General's Office, or other authorities based on applicable law. At EWU's discretion, the Contractor may be required to directly fulfill notification requirements, or if EWU elects to perform the notifications, the Contractor must reimburse EWU for all associated costs.

Contractor is responsible for all costs incurred in connection with a security incident, privacy breach, or potential compromise of data, including, but not limited to:

- A. Computer forensics assistance to assess the impact of a Data Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with breach notification laws;
- B. Notification and call center services for individuals affected by a security incident or privacy breach, including fraud prevention, credit monitoring, and identify theft assistance; and
- C. Regulatory defense, fines, and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

Contractor agrees to defend, indemnify and hold harmless EWU for any damages, costs, penalties, or fines related to unauthorized use or disclosure of Confidential Information by 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.

Contractor's obligations under this section survive the termination of this DSA and continue for as long as Contractor maintains the data and for any breach or potential breach, at any time.

## **11. CYBER LIABILITY INSURANCE**

Contractor shall procure and maintain, at its sole expense, cyber insurance as detailed herein, with limits of not less than \$3,000,000 per occurrence and in the aggregate. Insurance shall be obtained from an insurance company having an A.M. Best rating of "A-" or better from a generally-recognized insurance rating agency.

Insurance shall include, at a minimum, the following:

- A. Third-party Network Security and Privacy Liability coverage for costs and expenses resulting from the unauthorized acquisition, access, use, physical taking, release, distribution, or disclosure of personal information, identity theft, breaches by third parties and employees, or similar incident. This coverage applies to:
  - i. network security failures such as a data breach, malware infection, viruses, malicious code, cyber extortion, ransomware, or business email compromise; and,
  - ii. privacy liabilities arising out of a cyber incident or privacy law violation arising from or relating to an unauthorized disclosure or use of personal data or any use or disclosure of personal data in breach of the terms and conditions of this DSA or in violation of applicable federal, state, local or foreign security and/or privacy laws or regulations.

Network Security and Privacy Liability coverage applies to such costs and expenses of notification, fraud alert and credit monitoring, public relations expertise, consultants, setting up a call center, negotiation and payment of a ransomware demand, data restoration, mitigation of damages, forensic investigation, regulator fines and penalties, and legal expenses. This coverage shall also provide third-party coverage to cover costs and expenses incurred by EWU as a result of a cyber incident by vendor.

- B. First-party Business Interruption coverage in the event of a network security breach.
- C. First-party Cyber Extortion coverage for threats against data and identity theft, such as ransoms or denial of service attacks.
- D. Liability coverage for claims related to theft, damage, corruption, or destruction of any EWU data.

Such insurance must cover all of the foregoing without limitation if caused by an independent company working on behalf of the Contractor. Such policy shall not contain exclusions for the acts, errors omissions, or negligence of either Contractor or EWU or their respective employees, agents, subcontractors or volunteers, whether intentional or unintentional, resulting in or relating to any use of EWU data under this DSA. Such insurance shall be maintained in force at all times during the term of the Contract and for a period of three years thereafter for services completed during the term of the Contract.

Upon its procurement of the foregoing insurance and thereafter upon EWU's request, Contractor shall furnish EWU with certificates or other proof of each such policy reasonably satisfactory to EWU. Contractor shall notify EWU within three (3) business days following any cancellation, or receipt of notice of cancellation, of any such policy.

The requirements as to the types and limits of insurance coverage to be maintained by Contractor is not intended to, and shall not, limit or qualify in any manner the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including without limitation provisions relating to indemnification.

## **12. AMENDMENTS AND ALTERATIONS**

This Agreement 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.

## **13. TERMINATION**

Either Party may terminate this Agreement with 30 days' written notice to the other Party's Contract Administrator. However, once data is accessed by Contractor, this Agreement is binding as to the confidentiality, use of the data, and disposition of all data received as a result of access, unless otherwise amended by the mutual agreement of both Parties. Termination of this DSA by Contractor is grounds for termination by EWU of the underlying contract between Contractor and EWU and shall be considered a material breach.

EWU may terminate this DSA for default, in whole or in part, by written notice to Contractor, if EWU has a reasonable basis to believe that Contractor has: (1) failed to perform under any provision of this DSA; (2) violated any law, regulation, rule, or ordinance applicable to this DSA; and/or (3) otherwise breached any provision or condition of this DSA. If it is later determined that Contractor was not in default, the termination shall be considered a termination for convenience.

## **14. SEVERABILITY AND GOVERNANCE**

The provisions of this DSA are severable. If any provision of this Agreement is held invalid by any court, that invalidity shall not affect the other provisions of this DSA and the invalid provision shall be considered modified to conform to the existing law.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable state and federal statutes and rules; and
- B. Provisions of the Agreement, including materials incorporated by reference.

This DSA, including any amendments, addenda, attachments, or exhibits hereto, shall be construed under the laws of the State of Washington. In the event of a lawsuit involving this DSA, venue shall be proper only in Spokane County, WA.

## **15. ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either Party in whole or in part, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld.

## **16. WAIVER**

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

## **17. 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 DSA. "Claim," as used in this DSA, 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.

**18. SURVIVING OBLIGATIONS**

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive, including but not limited to paragraphs 2, 6, 7, 8, 9, 10, 11, 14, 15, 16, and 17.

**19. CONTRACT MANAGEMENT AND NOTICE**

The contacts listed for each of the Parties shall be responsible for and shall be the contact person for all notices and communications regarding the performance of this Agreement or data requirements, unless indicated otherwise:

<b>EWU Contract Administrator</b>	<b>EWU Data Manager</b>	<b>Contractor Data Manager</b>	<b>Contractor Contract Manager</b>
<b>Name, Title</b> <b>Street Address and/or Mailing Address</b> <b>City, State, Zip</b> <b>Phone(s)</b> <b>Email(s)</b>	Name, Title Street Address and/or Mailing Address City, State, Zip Phone(s) Email(s)	Name, Title Street Address and/or Mailing Address City, State, Zip Phone(s) Email(s)	Name, Title Street Address and/or Mailing Address City, State, Zip Phone(s) Email(s)

**THIS AGREEMENT**, including any referenced exhibit(s) and/or attachment(s), is executed by the persons signing below, who warrant they have the authority to execute the Agreement

<b>EWU Contract Administrator</b>	<b>Contractor Contract Manager</b>
By: _____ Name, Title	By: _____ Name, Title
Date: _____	Date: _____