

GENERAL TERMS AND CONDITIONS

1. Definitions.

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

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

“General Terms and Conditions” means this Exhibit A.

“Additional Terms and Conditions” means Exhibit B.

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

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

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

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

- 2. Payment.** WSP shall reimburse the Contractor an amount not to exceed the Maximum Contract Amount specified on the Face Sheet of this Contract. Payment will be made by the state agency or political subdivision indicated on ordering document within 15 days of receipt of equipment. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory, performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the discount period shall commence on the date final approval for payment is authorized. Under "Chapter 39.76 RCW," if purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

<https://www.ofm.wa.gov/it-systems/statewide-vendorpayee-services>

- 3. Billing Procedure.** WSP shall reimburse the Contractor according terms & Conditions of contract. Compensation for services rendered and goods procured shall be payable upon

receipt of properly completed invoices. The invoices shall include WSP's contract number. The Contractor shall submit the final invoice not later than 60 calendar days from the Contract End Date.

1. **Advance Payments.** WSP agrees to pay Textron Aviation a \$60,000 initial deposit, \$40,000 due at 12 months prior to delivery and \$40,000 due at 6 months prior to delivery. A tentative completion date must be disclosed before the final \$40,000 is paid. WSP reserves the right to withhold payment and/or seek relief for previous payments made for non-performance from vendor.
2. **Assignment.** The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by the Contractor in whole or in part, without the express written consent of WSP.
3. **Attorneys' Fees and Costs.** If any litigation is brought to enforce any term, clause, provision, or section of this Contract or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorney's fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels as well as subsequent to judgment in obtaining execution thereof. In the event that parties to this Contract engage in arbitration, mediation, or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution, including the cost of mediation or arbitration services. Each party shall be responsible for their own attorney's fees incurred as a result of the alternative dispute resolution method.
4. **Compliance with Civil Rights Laws.** During the period of performance for this Contract, the Contractor shall comply with all federal and state nondiscrimination laws.
5. **Confidentiality.** The Contractor shall not use or disclose any information concerning WSP, or information that may be classified as confidential, to any third party without the written permission of WSP. The Contractor shall destroy or return all such information to the WSP Program Manager at the end of this Contract.
6. **Conflict.** These Terms and WSP's Field order Terms, shall take precedence over any other documents incorporated by reference.
7. **Contract Execution and Amendments.** This Contract shall be binding on WSP only upon signature by the Chief of WSP or designee. WSP and the Contractor may mutually amend this Contract. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind WSP and the Contractor.
8. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is in compliance with Chapter 42.52 RCW, Ethics in Public Service, and will comply with Chapter 42.52 RCW throughout the term of the Contract.
9. **Disputes.** In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

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

- a) If after this review resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
- b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- d) Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- e) Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- f) Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- g) If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

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

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

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

- 13. Industrial Insurance Coverage.** Prior to performing work under this Contract, the Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an “employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the period of performance for this Contract. WSP shall not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Agreement.
- 14. Insurance.** The Contractor shall provide insurance coverage as set out in Exhibit B. The intent of the required insurance is to protect the State of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or any subcontractor, or agents of either, while performing under the terms of this Contract.
- 15. Inspection; Maintenance of Records.** During the term of this Contract and for one year following termination or expiration of this Contract, the Contractor shall give reasonable access to the Contractor’s place of business and records to WSP and any other employee or agent of the State of Washington or the United States of America for the purpose of inspecting the Contractor’s place of business and its records, and monitoring, auditing and evaluating the Contractor’s performance and compliance with applicable laws, regulations, rules and this Contract.

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

- 16. Order of Precedence.** In the event of any inconsistency in the terms of this Contract, or between its terms and any applicable statute or rule WSP’s Terms & Conditions take precedence over vendor’s terms.
- 17. Overpayments to Vendors.** Contractor shall refund to purchaser the full amount of any erroneous payment or overpayment under this contract within 30 days’ written notice..
- 18. Personnel.** WSP employees performing work under the terms of this Contract (if any) shall be under the direct command and control of the Chief of WSP or designee, and shall perform duties required under this Contract in a manner consistent with WSP policy and regulations, and applicable federal, state and local laws. The assignment of WSP personnel under this Contract shall be at the discretion of the Chief of WSP or designee.
- 22. Patent and Copyright Indemnification.** a. The Contractor, at its expense, shall defend, indemnify, and hold WSP harmless from and against any claims against WSP that any Product or Work Product supplied hereunder, or WSP’s use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. (Product shall mean shall mean any Contractor-supplied equipment, software, and documentation). The Contractor shall pay all costs of such defense and settlement and any

penalties, costs, damages, and attorneys' fees awarded by a court or incurred by WSP provided that WSP:

- (1) Promptly notifies the Contractor in writing of the claim, but WSP's failure to provide timely notice shall only relieve the Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to the Contractor; and
- (2) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant the Contractor sole control of the defense and all related settlement negotiations.

b. If such claim has occurred, or in the Contractor's opinion is likely to occur, WSP agrees to permit the Contractor, at its option and expense, either to procure for WSP the right to continue using the Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and the Contractor determines that none of these alternatives is reasonably available, the Contractor, at its risk and expense, will take back the Product or Work Product and provide WSP a refund. In the case of Work Product, the Contractor shall refund to WSP the entire amount WSP paid to the Contractor for the Contractor's provision of the Work Product. In the case of Product, the Contractor shall refund to WSP its depreciated value. No termination charges will be payable on such returned Product, and WSP will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by WSP shall be refunded by the Contractor.

- c. The Contractor has no liability for any claim of infringement arising solely from:
- (1) The Contractor's compliance with any designs, specifications or instructions of WSP;
 - (2) Modification of the Product or Work Product by WSP or a third party without the prior WSP knowledge and approval of the Contractor; or
 - (3) Use of the Product or Work Product in a way not specified by the Contractor; unless the claim arose against the Contractor's Product or Work Product independent of any of these specified actions.

d. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

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

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

- 25. Site Security.** While on WSP's premises, the Contractor shall conform in all respects with physical, fire, or other security regulations communicated to the Contractor by WSP.
- 26. Statewide Vendor Payment Registration.** The Contractor is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under this Contract. The Washington State Office of Financial Management (OFM) maintains the Statewide Vendor Payment System; to obtain registration materials go to <http://www.ofm.wa.gov/default.asp>.
- 27. Subcontracting.** Except as otherwise provided in this Contract, the Contractor may subcontract for any of the services provided under this Contract with the prior, written approval of WSP. The Contractor shall be responsible for the acts and omissions of any subcontractor.
- 28. Survivorship of Provisions.** Any terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive performance by the parties to this Contract shall so survive the completion of the period of performance or termination of this Contract.
- 29. Taxes.** WSP shall pay sales and use taxes imposed on services provided by the Contractor under this Contract if required by state law. The Contractor shall pay all other taxes, including, but not limited to, Washington State Business and Occupation Tax, taxes based on the Contractor's income, or personal property taxes levied or assessed on the Contractor's personal property to which WSP does not own title.
- 30. Termination for Convenience.** Except as otherwise provided in this Contract, WSP may terminate this Contract upon thirty (30) calendar days written notification. If this Contract is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Contract for performance rendered prior to the effective date of termination.
- 31. Termination for Default.** WSP may terminate the Contract for default, in whole or in part, if WSP has a reasonable basis to believe that the Contractor failed to perform under any provision of this Contract; violated any applicable law, regulation, rule or ordinance; or otherwise breached any provision or condition of this Contract.

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

In the event of termination for default, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract, and all administrative costs directly related to procuring the replacement contract. If it is determined that the Contractor was not in default the termination shall be deemed a termination for convenience. The rights and remedies of WSP provided under this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

- 32. Termination Procedure.** The following provisions shall survive and be binding on the parties to this Contract in the event this Contract is terminated.
- a. The Contractor shall stop work under this Contract on the date specified in the notice of termination, and shall comply with all instructions contained in the notice of termination.
 - b. The Contractor shall deliver to the WSP Project Manager identified on the Face Sheet of this Contract, all WSP property in the Contractor's possession and any WSP property produced under this Contract. The Contractor grants WSP the right to enter upon the Contractor's premises for the sole purpose of recovering any WSP property that the Contractor fails to return within ten (10) calendar days of termination of the Contract. Upon failure to return WSP property within ten (10) calendar days of the Contract termination, the Contractor shall be charged with all reasonable costs of recovery, including transportation and attorney's fees. The Contractor shall protect and preserve any property of WSP that is in the possession of the Contractor pending return to WSP. The Contractor shall provide written certification to WSP that the Contractor has returned all WSP property in the Contractor's possession.
 - c. WSP may direct assignment of the Contractor's rights to and interest in any subcontract or orders placed to WSP. WSP may terminate any subcontract or orders, and settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - d. WSP shall be liable for and shall pay for only those services authorized and provided through the date of termination. WSP may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to WSP.
 - e. In the event of termination for default, WSP may withhold a sum from the final payment to the Contractor that WSP determines necessary to protect WSP against loss or additional liability.
- 33. Treatment of Assets.** Any property furnished by WSP to the Contractor under the terms of this Contract shall be used only for the performance of this Contract. The Contractor shall be responsible for any loss or damage of property provided to the Contractor by WSP resulting from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices. Upon the discovery of loss or damage of WSP property, the Contractor shall notify WSP and take all reasonable steps to prevent any further loss or damage. Upon the termination or completion of this Contract, the Contractor shall surrender all WSP property to the WSP Project Manager indicated on the Face Sheet of this Contract. The MSO (titling document) will be released to the purchaser once payment in full has been received by Textron Aviation.
- 34. Waiver.** A failure by WSP to exercise its rights under this Contract shall not preclude WSP from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract unless stated to be such in writing and signed by an authorized representative of WSP and attached to the original Contract.