

# Seattle Colleges Purchasing Department General Terms and Conditions

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

*“Amendment”* means any change to the terms, conditions, scope or price of a Contract.

*“Contract”* means the entire written agreement between the Purchaser and the Contractor, including: the Contract Form (if used), the Purchase Order, these General Terms and Conditions, and any other exhibits, documents, and materials incorporated by reference in the Contract Form or Purchase Order.

*“Contract Administrator”* means the person designated in writing by the Purchaser in the notice provisions of the Contract, or otherwise by proper written notice, as set forth in the Contract, as the party authorized to bind the Purchaser to the Contract or amendments. The title “Buyer” or “Senior Buyer” shall be construed to be the equivalent of the term “Contract Administrator” when affixed to any Purchase Order, Contract, or Amendment to a Contract.

*“Contract Form”* means the document signed by the Contract Administrator and the Contractor’s Authorized Representative.

*“Contractor”* means that firm, organization, individual or any legal or political body seeking to provide or providing goods or performing services under this Contract.

*“Contractor’s Authorized Representative”* means the individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in Solicitation, Bid and Contract documents.

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

*“Purchase Order”* means a document issued by the Purchaser authorizing the delivery of goods or services described in the document. The commencement of delivery of goods and/or services in response to a Purchase Order shall constitute acceptance of the Purchase Order, which shall by reference include these terms and conditions, whether attached to the Purchase Order or not.

*“Purchaser”* means Seattle Colleges District VI, also identified as The Seattle Colleges.

*“Regulation”* means any statute, rule, or applicable policy adopted by the Purchaser or any governmental body of competent jurisdiction.

*“Subcontract”* means any agreement or contract between the Contractor and an individual or other entity to perform all or any portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.

*“Subcontractor”* means one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The term “Subcontractor” means any Subcontractor(s) in any tier.

1. **ACCEPTANCE OF TERMS:** The Contractor hereby agrees to acceptance of the terms and conditions set forth in this document either upon execution of a written Contract, or upon commencement of the delivery of goods and/or services in response to an order authorized by a Contract Administrator. Any and all additional or different terms proposed by Contractor are objected to and hereby rejected, unless otherwise provided in writing by the Purchaser.

2. **ADVANCE PAYMENTS PROHIBITED:** No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by the Purchaser, except as authorized by law, except quarterly advance payments for maintenance, where such exception is explicitly authorized by Contract.

3. **ADVERTISING:** The Contractor, nor any Subcontractor or employee or agent of the Contractor or any Subcontractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

4. **AMENDMENTS:** This Contract may be amended by mutual agreement of the parties. No modification of any of the terms, conditions, delivery, price, quality, quantity or specifications shall be permitted unless the modification is authorized by written and executed amendment to the Contract.

5. **ANTITRUST:** Contractor hereby assigns to Purchaser any and all claims for overcharges resulting from antitrust violations, except as to overcharges that result from antitrust violations commencing after the price is established under this Contract and that are not passed on to the Purchaser.

6. **ATTORNEYS’ FEES:** In the event of litigation or other action brought to enforce contract terms, each party shall bear its own costs of representation.

7. **AUTHORITY TO BIND:** The Contractor, if requested by the Contract Administrator, shall provide evidence prior to execution of the Contract that the Contractor’s Signatory has the legal authority to bind the Contractor to the Contract.

8. **ACCESS TO DATA:** The Contractor shall provide access to data generated under this contract to the Purchaser, 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 the Contractor’s reports, including computer models and methodology for those models.

## 9. BREACH OR DEFAULT

a. **Breach:** A breach of a term or condition of this Contract shall mean any one or more of the following events:

- i. The Contractor fails to perform the services by the date required or by a later date as may be agreed by Amendment to this Contract;
- ii. The Contractor breaches any warranty or fails to perform or comply with any term or agreement in this Contract;
- iii. The Contractor makes any general assignment for the benefit of creditors;
- iv. In the Purchaser’s sole opinion, the Contractor becomes insolvent or in an unsound financial

condition so as to endanger performance hereunder;

- v. The Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors;
- vi. Any receiver, trustee, or similar official is appointed for the Contractor or any of the Contractor's property;
- vii. The Contractor is determined to be in violation of any regulations and that such determination, in the Purchaser's sole opinion, renders the Contractor unable to perform any aspect of this Contract.

- b. **Default:** The Contractor may be declared in default for a material breach of any term or condition.

**10. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:**

At all times during the term of this Contract, the Contractor shall comply with all statutes and regulations promulgated by the United States, State of Washington, and such other jurisdictions of competent authority or their administrative bodies. Such laws and regulations include, but are not limited to Non-Discrimination, Equal Employment Opportunity, worker health and safety, rights and protections afforded to persons with disabilities, energy efficiency, and water quality.

**11. CONTRACT ADMINISTRATOR AND PROJECT MANAGER RESPONSIBILITIES:**

The Purchaser shall appoint a Contract Administrator who shall serve as a single point of contact for this Contract, who will provide administrative oversight concerning terms and conditions of the Contract. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The Purchaser will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

The Purchaser may identify a separate Project Manager, who will serve as the principal point of contact for monitoring product delivery schedules or ongoing project activities. Authority to execute Contract Amendments on the part of the Purchaser is reserved to the Contract Administrator.

**12. CONTRACT MANAGEMENT:** The Contractor shall undertake the following tasks.

- a. Upon award of this Contract, the Contractor shall:
  - i. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled;
  - ii. Identify the Contractor's Authorized Representative, who will be the principal point of contact for this Contract;
  - iii. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Authorized Representative assigned to this Contract;
  - iv. Be bound by all written communications given to or received from the Contractor's Authorized Representative.

- b. At the request of the Contract Administrator, the Contractor shall at no additional charge, assist the Purchaser in the following manner to make the most cost-effective, value-based, purchases including, but not limited to:
  - v. Visiting the Purchaser's sites and providing the Purchaser with materials/supplies/equipment recommendations;
  - vi. Providing Purchaser with a detailed list of contract items including current contract pricing and part numbers.
- c. The Contractor's Authorized Representative will be responsible for addressing Purchaser's concerns, including, but not limited to:
  - i. Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation;
  - ii. Providing Purchaser with regular and timely status updates in the event of an order or repair fulfillment delay;
  - iii. Acting as the lead and liaison between the manufacturer and the Purchaser in resolving warranty claims for contract items purchased.

Violation of any provision of this section may be considered a material breach establishing grounds for Contract termination.

**13. CONTRACTOR QUALIFICATIONS AND REQUIREMENTS:**

The Contractor, prior to commencing any work or other performance specified by the Contract, shall demonstrate establishment as a legal entity, possessing all required licenses, bonding, facilities, equipment, and trained personnel, and having paid all necessary fees and assessments. The Contractor shall maintain compliance with these requirements throughout the life of this Contract and for such period subsequent to conclusion of the Contract as the Contract may require. Contractor shall, where appropriate, have and be able to present proof of the following certifications, registrations and licenses:

- a. Certification by a manufacturer as an authorized reseller, certified maintenance provider, or have other similar certifications;
- b. Confirmation from the manufacturer that the Contractor is an authorized distributor, dealer or service representative;
- c. Confirmation that personnel, including employees, interns, subcontractors, agents, or volunteers engaged in the provision of services under this Contract shall obtain, (prior to the performance of services), any licenses or certifications required by statute, regulation or contractual obligation for the performance of services.

**14. DELIVERY:** For any exception to the delivery date specified under this Contract, the Contractor shall give prior notification and obtain written approval thereto from Purchaser. With respect to delivery under the order, time is of the essence and the Contract is subject to termination for failure to deliver on time.

The acceptance by Purchaser of late performance with or without objection or reservation shall not waive the right to

claim damage for such breach nor constitute a waiver of the requirement for the timely performance of any obligation remaining to be performed by the Contractor.

The Contractor shall make delivery at the location specified and within the date and time requirements set forth in the Contract, or in accordance with the order document if different than the Contract.

The Contractor shall bear all costs related to failure to provide delivery at the location specified within the required date and time requirements.

15. **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 Director of Purchasing.
- The request for a dispute hearing must: be in writing; state the disputed issue(s); state the relative positions of the parties; state the Contractor's name, address, and contract number; and be mailed to the Director of Purchasing within 3 business days after the parties agree that they cannot resolve the dispute.
  - The Contract Administrator shall send a written answer to the Contractor's statement to the Director of Purchasing within 5 business days.
  - The Director of Purchasing shall review the written statements and reply in writing to both parties within 10 business days. The Director of Purchasing may extend this period if necessary by notifying the parties.
  - 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.
16. **GENERAL WARRANTIES:** The Contractor hereby warrants and agrees to the following:
- Product:** The Contractor warrants all goods, products, and services delivered under this order conform to specifications herein, shall be free from defects in material and workmanship, and shall be fit for the intended purpose. The Contractor shall replace any goods, products or services found by the Purchaser to be defective immediately upon notification by the Purchaser. The Contractor shall bear all costs of replacement, including delivery and installation.
  - Equipment:** The equipment shall be new (unused) current standard production model and shall be completely prepared for customer delivery through service by a factory-franchised dealer prior to delivery. Any equipment shall include all inspection coupons, or warranty identification cards furnished to the trade in general in accordance with standard warranty policy.
  - Equal:** Specifications that include a brand/trade name are only intended to establish a standard of quality against which other brands will be evaluated. Product and service specifications contained in the solicitation are intended solely to clearly describe type, quality, performance and use, and are not intended to be restrictive. So as not to misrepresent the requirements of the solicitation, brand/trade references other than those

specified will be considered on the basis of whether products and services bid are at least equal to the quality, performance and use of the standard of quality identified in the solicitation. The Purchaser reserves the right to accept any product that deems to be of equal quality and performance or reject any product that does not deem to be equal.

- Price:** The Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
  - Financial Status:** The Contractor warrants that at the time of the commencement of its performance under this Contract, it has not commenced bankruptcy proceedings, and that there are no judgments, liens or encumbrances of any kind affecting title to any goods that are the subject of this Contract.
17. **GIFTS AND GRATUITIES:** Contractor shall comply with all state laws regarding gifts and gratuities. Contractor acknowledges that it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value to Purchaser's officers, employees, agents, or families of such persons in conjunction with the Purchaser's business or contract activities.
18. **GOVERNING LAW AND VENUE:** The laws of the State of Washington shall govern this Contract, and the venue of any action brought hereunder shall be in the Superior Court, County of King in Seattle, State of Washington.
19. **HAZARDOUS MATERIALS:** In the event that the Contract requires the use or delivery of hazardous materials, the Contractor shall include a complete Material Safety Data Sheet (MSDS) which conforms to the requirements of Chapter 296-839 of the Washington Administrative Code for each hazardous material. Additionally, each container of hazardous materials must be appropriately labeled with: The identity of the hazardous material; appropriate hazard warnings, and name and address of the chemical manufacturer, importer, or other responsible party. The Federal OSHA Form 20, if used, shall be modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

## 20. INSURANCE

**General Requirements:** Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the Contract and such additional period following completion of the Contract as may be set forth elsewhere in this Contract. Upon request, Contractor shall furnish evidence in the form of a Certificate of Insurance and applicable endorsements satisfactory to the Purchaser that insurance, in the following kinds and minimum amounts, has been secured.

Contractor shall include all Subcontractors as insured under all required insurance policies, or require subcontractors to obtain and maintain insurance commensurate with these requirements and 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.

All insurance provided in compliance with this Contract shall be primary and non-contributory as to any other insurance or self-insurance programs afforded to or maintained by the Purchaser.

#### **Specific Requirements:**

**Commercial General Liability Insurance, including Employer's Liability Endorsement (Stop-Gap):** The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability 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 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 the Purchaser 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)	\$2,000,000
Products and Completed Operations	\$1,000,000
Employer's Liability (Stop-Gap)	\$1,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$50,000
Medical Expense Limit (any one person)	\$5,000

Coverage Exceptions: The coverages specified above shall not be required under the following circumstances.

- a. Products and Completed Operations insurance shall not be required unless the Contract provides for the delivery and installation of equipment, or construction.
- b. In the event that the Contract provides solely for the delivery of commonly available goods, coverages specified above shall not be required unless specified otherwise in the Solicitation.

**Business Auto Policy (BAP):** The Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. The business auto liability shall include all autos and other ground vehicles.

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

- a. Additional Insured: The Purchaser shall be named as an additional insured on all general liability, umbrella and excess insurance policies.
- b. Notice of Policy Cancellation/Non-renewal:
  - i. For insurers subject to Chapter 48.18 of the Revised Code of Washington (admitted and

regulated by the Washington State Insurance Commissioner) a written notice shall be given to the Contract Administrator forty-five (45) calendar days prior to cancellation or any material change to the policy as it relates to this Contract.

- ii. For insurers subject to Chapter 48.15 of the Revised Code of Washington (Surplus Lines) a written notice shall be given to Contract Administrator (20) calendar days prior to cancellation or any material change to the policy (policies) as it relates to this Contract.
- iii. Cancellation for Non-payment to Premium: If cancellation on any policy is due to non-payment of premium, a written notice shall be given the Contract Administrator ten (10) calendar days prior to cancellation.

Written notice of any cancellation shall include the affected Contract reference number(s).

- c. Identification: Policy (Policies), Endorsements and Certificates of Insurance shall include the affected Contract reference number(s).
- 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.

**Waivers and Modifications:** Contractors may request a waiver of or modification to any of the above referenced insurance requirements by submitting a written request and evidence of insurance to the Contract Administrator prior to execution of the Contract. If an insurer is not an admitted carrier, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 of the Revised Code of Washington and Chapter 284-15 of the Washington Administrative Code.

21. **INDUSTRIAL INSURANCE COVERAGE:** The Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington concerning Industrial Insurance. Failure to provide industrial insurance coverage or to pay premiums or penalties on behalf of its employees, as may be required by law, shall be considered a material breach of the Contract subject to the Termination provisions of the Contract.
22. **INDEMNIFICATION:** The Contractor shall indemnify, defend, and hold the Purchaser, its Board of Trustees, and their officers, employees, students and agents, harmless from and against all claims for damages, costs (including attorney's fees), or liability, relating to the death or injury to any persons or the damage of any property resulting from or arising out of the acts or omissions of the Contractor or its employees, agents, or Subcontractors in connection with the Contract. The Contractor expressly agrees to indemnify, defend, and hold harmless the Purchaser for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the Contract. The Contractor shall be required to indemnify, defend, and hold harmless the Purchaser only to the extent that the claim is caused in whole or in part by negligent acts or omissions of

the Contractor or Subcontractor.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify the Purchaser, its Board of Trustees, and their officers, employees, students and agents as provided herein.

23. **INDEPENDENT STATUS OF CONTRACTOR:** In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 or Title 51 of the Revised Code of Washington.
24. **INFRINGEMENTS:** The Contractor shall protect, defend, indemnify, and hold harmless the Purchaser against all claims, suits, or proceedings for patent, trademark, copyright, or franchising infringement arising from the installation or use of materials ordered, and to assume all expenses and damages arising from such claims, suits, or proceedings.
25. **INSPECTION AND REJECTION:** All goods or materials purchased herein are subject to inspection and acceptance by Purchaser. Any rejection of goods because of nonconformity to the terms and specifications of the Contract, whether held by Purchaser, or returned, will be at Contractor's risk and expense.
26. **INSTALLATION:** In the event that the Contract calls for installation of equipment or other products, said installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a clean condition absent of any damage resulting from the Contractor's actions. In the event that the Purchaser determines that the Contractor damaged the equipment or other property of the Purchaser, the Contractor shall, at the direction of the Contract Administrator, either make full and complete repair of all damages or provide full compensation to Purchaser for the cost of such repairs.
27. **LEGAL NOTICES:** Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning equipment) shall be effective only if it is in writing and signed by the Contract Administrator, on behalf of the Purchaser, or the Contractor's Authorized Representative on behalf of the Contractor, 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, to the parties at the addresses provided in the Notices Section set forth elsewhere in the Contract.

In the absence of a Contract Form, which includes a Notices Section, notices shall be sent to the Purchaser at the address specified on the Purchase Order and to the Contractor at the address specified in the Vendor block of the Purchase Order.

Notice shall be deemed effective on receipt, or the fourth business day following transmittal of the notice, whichever is

earlier.

In the event of any claim or other indication of potential legal action by a third party, the notified party shall in turn immediately notify the other party to the Contract.

28. **LIENS, CLAIMS AND ENCUMBRANCES:** The Contractor warrants and represents that all the goods, materials, equipment or services supplied hereunder are free and clear of all liens, claims, or encumbrances of any kind.
29. **LIMITATION OF AUTHORITY:** Only Contract Administrator shall have the express, implied, or apparent authority to bind the Purchaser to any Contract, or to alter, amend, modify, or waive any clause or condition of any contract. No alteration, amendment, modification, or waiver or any clause or condition of this Contract shall be binding on the parties unless reduced to writing and executed by the signature of the parties as a Contract amendment.
30. **MERCURY CONTENT AND PREFERENCE:** The Contractor shall provide mercury-free products when available. Should mercury-free products not exist, Contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product. The Contractor shall provide any existing technical data pertaining to the addition of mercury or a mercury compound intentionally added to the product. If the product does not contain mercury or a mercury compound, Contractor shall submit a written statement to that effect. Contractor shall maintain compliance with these requirements throughout the life of this Contract.
31. **NON-WAIVER OF RIGHTS:** Failure to enforce the Purchaser's rights or waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach.
32. **ORDER IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting any order shall contain the applicable Contract number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein.
- Invoices, at the sole discretion of the Purchaser, may not be processed for payment until all items invoiced are received and accepted. Shipments received without order numbers may, at the sole discretion of Purchaser, be refused and returned to the Contractor at the Contractor's expense.
33. **ORDER OF PRECEDENCE:** In the event of any inconsistencies or conflicting terms and conditions in this Contract, such inconsistency or conflict shall be resolved by giving precedence in the following order: federal, state, or local laws or regulations, the Contract, including General Terms and Conditions, the Purchaser's Solicitation and the Contractor's response to the Solicitation.
34. **OVERPAYMENTS TO CONTRACTOR:** Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days of

a written notice from the Purchaser to the Contractor. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

35. **PACKING:** No charges will be allowed for special handling, packing, wrapping, bags, containers, reels or other materials required for transport or delivery to the Purchaser, unless such charge(s) are explicitly identified as a separate cost in the Contractor's Response to the Solicitation, and incorporated in the Contract.

36. **PAYMENTS, CASH DISCOUNT, LATE PAYMENT CHARGES:** In order to receive payment the Contractor shall submit an invoice, in duplicate, to the address in the Contract. Invoices will be processed upon receipt of a properly completed invoice or after invoiced items are received and accepted, whichever is later. The invoice must identify the order number and clearly identify the items delivered to the Purchaser.

If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

If a discount is made available for this order, but the invoice does not reflect the existence of a cash discount, Purchaser is entitled to a cash discount with the period commencing on the date it is determined by Purchaser that a cash discount applies.

In accordance with the provisions of Chapter 39.76 of the Revised Code of Washington, if Purchaser fails to make timely payment, Contractor may invoice for one percent per month on the amount overdue, or a minimum of one dollar. Payment shall not be considered late if a check or warrant is available or mailed within the time specified, or if no terms are specified, within thirty days from date of receipt of a properly completed invoice or receipt and acceptance of all goods and/or services, whichever is later.

37. **PRICES:** Prices for any goods or services for which Contractor's compensation is set forth in the Contract on a unit price or hourly rate basis, shall be not more than the unit price specified in the Contract, but if the Contractor's costs are reduced by changes from the manufacturer or distributor, such reduction in costs shall be made available to the Purchaser. In the event that the Contract specifies a lump-sum basis for payment for all goods and services to be provided, the price shall not exceed the total price agreed to in the Contract.

38. **PROPRIETARY OR CONFIDENTIAL INFORMATION:** To the extent consistent with RCW Chapter 42.56, the Purchaser shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the Purchaser 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, the Purchaser will release the requested information on the date specified. The Purchaser'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 the Purchaser retains Contractor's

information in the Purchaser 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.

39. **PROTECTION OF CONFIDENTIAL AND PERSONAL 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 information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.56 of the Revised Code of Washington or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, District security data, or information identifiable to an individual that relates to any of these types of information.

Contractor agrees to hold, and to require any employees, agents or Subcontractors to hold, confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law.

The Contractor shall comply with all Health Insurance Portability and Accountability Act (HIPAA) requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA; then at Purchaser's request, Contractor agrees to execute Purchaser's Business Associate Contract in compliance with HIPAA.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: certify to Purchaser that Contractor has destroyed all Confidential Information; or return all Confidential Information to Purchaser; or take whatever other steps the Contract Administrator may require of Contractor to protect Purchaser's Confidential Information.

40. **RECORDS MAINTENANCE AND RIGHT OF INSPECTION:** The Contractor shall maintain, at no additional cost to Purchaser, all records and other materials relevant to this Contract for a period of six (6) years following the date of termination or expiration of this Contract. At no additional cost to Purchaser, these records shall be subject at all reasonable times to inspection, review or audit by the Purchaser, personnel duly-authorized by the Purchaser, the Office of the State Auditor, and any federal and state officials so authorized by regulation or this Contract.

In the event of commencement of any dispute, litigation, claim or audit is prior the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

41. **RISK OF LOSS:** The Contractor shall bear all risks of loss, damage, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance; and such loss, injury, or destruction shall not release Contractor from any obligation hereunder. In the event of a dispute regarding whether the loss, damage injury or destruction occurred prior to delivery the dispute shall be resolved by the dispute resolution set process set forth elsewhere in these terms.

42. **SEVERABILITY:** If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this Contract.

43. **SHIPPING INSTRUCTIONS:** All goods shall to be shipped prepaid, FOB Destination. Where shipping addresses indicate room numbers, the Contractor shall make delivery to that location at no additional charge.

44. **SECURITY AND SAFETY:** While on the Purchaser's premises, or otherwise engaged in work of the Contract in proximity to the Purchaser's property, personnel, or students, the Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

45. **SUBCONTRACTS AND ASSIGNMENT:** The Contractor shall not subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. The Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach of the Contract and shall serve as grounds for termination of the Contract for cause.

46. **SUBCONTRACTORS:** The Contractor shall retain full responsibility for the performance of work and adherence to the terms and conditions of this Contract by any subcontractor engaged by the Contractor for goods or services provided under this Contract at any tier. In addition:

- a. The Contractor shall execute a contract binding any Subcontractor to the terms and conditions of this Contract, and
- b. The Contractor shall not engage any Subcontractor not named in the Contractor's response to the Solicitation for the delivery of services or goods under this Contract without the written consent of the Contract Administrator.

For purposes of this section, the term Subcontractor shall not include those entities providing standardized goods or materials to the Contractor, which are generally available from the entity for sale to the general public.

47. **SURVIVORSHIP:** The terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Advertising, Disputes, General Warranties, Infringement, Order of Precedence, Proprietary or Confidential Information,

Protection of Confidential and Personal Information, and Records Maintenance and Right of Inspection shall survive the termination of this Contract.

48. **TAXES:** The following provisions pertaining to taxes shall apply to all Contracts awarded by the Purchaser:

- a. The Contractor shall not charge the Purchaser for federal excise taxes, and Purchaser agrees to furnish the Contractor, upon acceptance of goods or materials supplied under this order, with an exemption certificate.
- b. Unless otherwise indicated, Purchaser agrees to pay all State of Washington sales or use tax. The Contractor shall calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in in accordance with Section 458-20-247 of the Washington Administrative Code.
- c. All payments accrued on account of property taxes, payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.
- d. Where required by state statute or regulation, the Contractor shall pay for and maintain in current status all taxes necessary for Contract performance.

49. **TERMINATION PROCEDURES:** After receipt of a notice of termination, and except as otherwise directed by the Purchaser, the Contractor shall:

- a. Stop work under this Contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
- c. If directed by the Purchaser, assign to the Purchaser all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. With the approval or ratification of the Purchaser to the extent the Purchaser may require, which approval or ratification, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;
- e. In the manner and at the time directed by the Purchaser, transfer title to the Purchaser and deliver any property which, if this Contract had been completed, would have been required to be furnished to the Purchaser;
- f. Complete performance of such part of the work as shall not have been terminated by the Purchaser; and
- g. Take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to this Contract in the possession of the Contractor in which the Purchaser has or may acquire an interest.
- h. The direction by, or ratification of, action of the Purchaser, to the extent exercised, shall be final for purposes of Items c through g of this Section.

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

The rights and remedies of the Purchaser 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.

**50. TERMINATION REASONS AND TIME**

**REQUIREMENTS:** The Contract may be terminated prior to its specified completion date for the following reasons and in the specified time frames below:

- a. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the Purchaser shall be entitled, by written notice, to cancel and/or terminate this Contract in its entirety or in part for breach and/or for default of any of the terms herein. Provided further, the Purchaser shall retain all other rights against the Contractor by reason of the Contractor's breach as provided by law.
- b. Termination for Convenience: The Purchaser may terminate this Contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written notice of termination to the Contractor. If this Contract is so terminated, Purchaser shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the Purchaser prior to the effective date of Contract termination.
- c. Termination for Conflict of Interest: The Purchaser 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 of the Revised Code of Washington, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event that the Contractor, its officers, or employees were complicit in such a violation, the Purchaser shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event that the Contractor breaches this Contract.
- d. Termination Due to Change in Funding: If the funds the Purchaser relied upon to establish this Contract are withdrawn, reduced or limited, or if additional or modified conditions are placed on funding by the entity funding the Contract, the Purchaser may immediately terminate this Contract by providing written notice to the Contractor.
- e. Termination Due to Withdrawal of Authority: In the event that the Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of the Contract and prior to normal completion, the Purchaser may terminate the Contract. Termination shall be effective on the date specified in the notice of Purchaser.

- f. Termination by Mutual Agreement: The Purchaser and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.
- g. Unless otherwise specified above in this section, the effective date of termination shall be the date specified in the Purchaser's notice to the Contractor of termination.

**51. TREATMENT OF ASSETS:** Title to all property, equipment or other goods made available to the Contractor by the Purchaser under the Contract shall remain with the Purchaser. Any such property may be used solely for the performance of activities undertaken to complete the work of the Contract. Any such property shall be returned to the Purchaser at the conclusion of the Contract in an undamaged condition and in good working order. The Contractor shall compensate the Purchaser for any damage or loss of assets.

**52. TITLE TO PRODUCT:** Where title or other proof of ownership is required by law or regulation, or pursuant to the terms of the Contract, upon acceptance, or upon delivery, if there is no acceptance requirement specified in the Contract, Contractor shall convey to the Purchaser good title to the Product free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable, fully-paid, perpetual license to use the internal code (embedded software) in the Product. If the Purchaser subsequently transfers title to the Product to another entity, the Purchaser shall have the right to transfer the license to use the internal code with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either the Purchaser or Purchaser's transferee.

**END OF GENERAL TERMS AND CONDITIONS**