



PENINSULA COLLEGE

Standard Terms and Conditions

DEFINITIONS – As used throughout this CONTRACT, including these Standard Terms and Conditions, the following terms shall have the meaning set forth below:

"COLLEGE" means PENINSULA COLLEGE, any division, section, office, unit, campus or other entity of PENINSULA COLLEGE, or any of the officers or other officials lawfully representing PENINSULA COLLEGE.

"CONTRACT" means purchase order and/or the entire written agreement between the COLLEGE and the CONTRACTOR, including any Exhibits, Attachments, documents, and materials incorporated by reference.

"CONTRACTOR" means that firm, provider, organization, individual or other entity providing goods and/or performing service(s) under this CONTRACT, and shall include all employees, assigns, successors in interest and authorized agents of the CONTRACTOR.

"Debarment" means an action taken by a Federal or Washington State official to exclude a person or business entity from participating in transaction involving certain federal funds.

"Improper influence" means any influence that induces or tends to induce a COLLEGE employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

"Law" means any Federal, State, Local or COLLEGE regulation, law, rule, policy, or ordinance.

"Materials" means all products and information in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, software, digital file, computer programs, films, tapes, and sound reproductions.

"Ownership" includes the right to copyright, patent, and register, and the ability to transfer, these rights.

"Party" or "Parties" Party, when capitalized, shall mean an individual generic reference to the CONTRACTOR or the COLLEGE. Parties, when capitalized, shall mean both the CONTRACTOR and the COLLEGE.

"Personal Information" means information 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 license numbers, other identifying numbers, and any financial identifiers.

"RCW" means the Revised Code of Washington. All references in this CONTRACT to RCW chapters or sections shall include any successor, or replacement statute.

"Special Terms and Conditions" means terms and conditions other than these General Terms and Conditions.

"Subcontract" means any separate agreement or contract between the CONTRACTOR and an individual or entity ("Subcontractor") to perform all or 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 terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

1. **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 COLLEGE, except as authorized by law.
2. **AMENDMENTS:** – This CONTRACT may only be amended by the mutual written agreement of the Parties. No material alterations in any of the terms, conditions, delivery, price, quality, quantity, or specifications shall be effective unless the alteration is expressly acknowledged and accepted in writing by an authorized person at the COLLEGE.
3. **AMERICANS WITH DISABILITIES ACT (ADA):** – The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **ANTITRUST ASSIGNMENTS:** – The CONTRACTOR hereby assigns to the COLLEGE any and all claims for price fixing or overcharges relating to goods, products, services and/or materials purchased under this CONTRACT, 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 COLLEGE under an escalation clause.

5. **ASSIGNMENT:** – The work to be provided under this CONTRACT, and any claim arising thereunder, is not assignable or delegable by the CONTRACTOR without prior written consent by the COLLEGE. Provision of monies due under this CONTRACT shall only be assignable with prior written permission of the COLLEGE.
6. **ATTORNEYS' FEES:** – In the event of litigation or other action brought to enforce the CONTRACT terms; each party shall bear its own attorneys' fees and costs.
7. **BRANDS:** – Special brands, when named, are to indicate the standard or quality, performance, or use desired. Bids on CONTRACTOR's equal will be considered provided CONTRACTOR specifies brand, model, and the necessary descriptive literature. In the event the COLLEGE elects to contract for an alternate purported to be an equal by the CONTRACTOR, the acceptance of the item will be conditioned on the COLLEGE's inspection and testing after receipt. If, in the sole judgment of the COLLEGE, the item is determined not to be an equal, the material shall be returned at the CONTRACTOR's expense and this contract terminated.
8. **BREACH, DEFAULT, TERMINATION:**

- a. **Breach:** A breach of a term or condition of this CONTRACT shall mean any one or more of the following events:
- (1) The CONTRACTOR fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to this CONTRACT signed by the COLLEGE;
 - (2) The CONTRACTOR breaches any warranty or fails to perform or comply with any term or provision in this CONTRACT;
 - (3) The CONTRACTOR makes any general assignment for the benefit of creditors;
 - (4) In the COLLEGE's sole opinion, the CONTRACTOR becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
 - (5) The CONTRACTOR becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors;
 - (6) Any receiver, trustee, or similar official is appointed for the CONTRACTOR or any of the CONTRACTOR's property;
 - (7) The CONTRACTOR is determined to be in violation of any rules or Laws and that such determination, in the COLLEGE'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.
- c. 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 COLLEGE.

In the event of termination, COLLEGE 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 as 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.

- d. **Termination for Convenience:** The COLLEGE may terminate this CONTRACT, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to the CONTRACTOR. Termination charges shall not apply unless they are subsequently agreed upon by both Parties. Where termination charges are applicable, both Parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by the CONTRACTOR prior to date of termination. Should the Parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

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

- e. **Termination for Breach and/or Default:** Except in the case of delay or failure to perform resulting from circumstances beyond the control and without the fault or negligence of the CONTRACTOR or of the CONTRACTOR's suppliers or subcontractors, the COLLEGE shall be entitled, by written or oral 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 and to have all other rights against the CONTRACTOR by reason of the CONTRACTOR's breach as provided by Law.
- f. **Funding Contingency:** In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the COLLEGE may terminate this Agreement under the "Termination for Convenience" clause without advance notice, subject to renegotiation under those new funding limitations and conditions.

- g. **Termination by Mutual Agreement:** The COLLEGE or the CONTRACTOR may terminate this CONTRACT in whole or in part, at any time by giving sixty (60) calendar days notice, by mutual written agreement signed by authorized persons.
- h. **Termination for Withdrawal of Authority:** – In the event that COLLEGE’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, COLLEGE may terminate this Contract by seven (7) calendar days written notice to CONTRACTOR. No penalty shall accrue to COLLEGE in the event this section shall be exercised. This section shall not be construed to permit COLLEGE to terminate this Contract in order to acquire similar Services from a third party.
- i. **Termination for Cause by CONTRACTOR:** – This Contract may be terminated by CONTRACTOR if after reasonable notice and an opportunity to cure, COLLEGE 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 COLLEGE of such termination at least thirty (30) days before the date of termination. If the project is suspended by COLLEGE for more than ninety (90) consecutive days, CONTRACTOR may terminate this Contract by giving written notice. Upon termination by CONTRACTOR, COLLEGE 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.
9. **CHANGES:** – No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of orders under this Agreement will be effective without prior written consent of the COLLEGE.
10. **COMPLIANCE WITH APPLICABLE LAW:** – At all times during the term of this CONTRACT, the CONTRACTOR shall comply with all Laws, including but not limited to, nondiscrimination laws, anti-kickback laws, fraudulent claims law and export controls.
11. **CONFIDENTIALITY:** – The CONTRACTOR may use Personal Information and any other information gained by reason of this CONTRACT only for the purpose of this CONTRACT. The CONTRACTOR shall not disclose, transfer, or sell any such information to any third party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains. The CONTRACTOR shall maintain the confidentiality of all confidential information gained by reason of this CONTRACT, and shall return or certify the destruction of such information if requested in writing by the COLLEGE.
12. **CONFLICT OF INTEREST:** – Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COLLEGE may, in its sole discretion, by written notice to the CONTRACTOR, terminate this CONTRACT if it is found after due notice and examination by the COLLEGE that there is a violation of the Ethics in Public Service Act, [Chapter 42.52 RCW](#), or any similar statute involving the CONTRACTOR in the procurement of this CONTRACT, or the provision of goods or services under this CONTRACT. If this CONTRACT is terminated as provided above, the COLLEGE shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of this CONTRACT by the CONTRACTOR. The rights and remedies of the COLLEGE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.
13. **COPYRIGHT AND INTELLECTUAL PROPERTY PROVISIONS:** – Unless otherwise provided, all Materials produced under this CONTRACT shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the COLLEGE. the COLLEGE shall be considered the author of such Materials. If the Materials are not considered "works for hire" under the U.S. Copyright laws, the CONTRACTOR hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the COLLEGE effective from the moment of creation of such Materials. For Materials that are delivered under this CONTRACT, but that incorporate pre-existing materials not produced under this CONTRACT, the CONTRACTOR grants to the COLLEGE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that the CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to the COLLEGE. The COLLEGE shall receive prompt written notice of each notice or claim of copyright infringement received by the CONTRACTOR with respect to any Materials delivered under this CONTRACT. The COLLEGE shall have the right to modify or remove any restrictive markings placed upon the Materials by the CONTRACTOR.
14. **COVENANT AGAINST CONTINGENT FEES:** – The 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, as defined in the [FAR Subpart 3.4](#), maintained by the CONTRACTOR for the purpose of securing business. The COLLEGE shall have the right, in the event of breach of this clause by the 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.
15. **DEBARMENT CERTIFICATION:** – The CONTRACTOR, by accepting the terms of this CONTRACT, certifies that the CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal or Washington State department or agency from participating in transactions. The CONTRACTOR shall include the above mentioned requirement in any and all subcontracts into which it enters. In the event that the CONTRACTOR becomes debarred, suspended or ineligible from participating in transactions, the CONTRACTOR shall notify the COLLEGE in writing within three working days of such an event.
16. **DELIVERY AND ACCEPTANCE:** – Delivery shall be accomplished by the date and time in the CONTRACT, and noncompliance may be construed as grounds for termination for cause for failure to deliver on time. Partial delivery will not be construed as acceptance of goods,

including failure to deliver related software, materials or documentation. Unless otherwise provided in writing, the COLLEGE shall have ninety (90) days after delivery to accept software and equipment.

17. **DELIVERY RESTRICTIONS:** – Parking on campus sidewalks, grounds, or roadways is strictly prohibited.
18. **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 COLLEGE.
- a. The request for a dispute hearing must:
 - (1) Be in writing;
 - (2) State the disputed issue(s);
 - (3) State the relative positions of the parties;
 - (4) State the CONTRACTOR'S name, address, and contract number; and
 - (5) Be mailed to the COLLEGE and the other party's (respondent's) contract manager within 3 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 COLLEGE and the requester within 5 working calendar days.
 - c. The COLLEGE shall review the written statements and reply in writing to both parties within 10 working days. The COLLEGE 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.

19. **DUPLICATE PAYMENT:** – The COLLEGE shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.
20. **FORCE MAJEURE:** – Neither the CONTRACTOR nor the COLLEGE shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the CONTRACTOR or the COLLEGE. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the COLLEGE acting in either its sovereign or contractual capacity, war, acts of terrorism, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or other force majeure; but in every case the delays must be beyond the reasonable control and without fault or negligence of the CONTRACTOR, the COLLEGE, or their respective Subcontractors.
21. **GOVERNING LAW:** – This CONTRACT shall be 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 Clallam County.
22. **INDEMNIFICATION:** – The CONTRACTOR shall indemnify, defend, and hold the COLLEGE, the Board of Trustees of the COLLEGE, 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 this CONTRACT. The CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the COLLEGE for any claim arising out of or incident to the CONTRACTOR's or any subcontractor's performance or failure to perform this CONTRACT. The CONTRACTOR shall be required to indemnify, defend and hold harmless the COLLEGE only to the extent claim is caused in whole or in part by negligent acts or omissions of the CONTRACTOR. The CONTRACTOR waives its immunity under [Title 51 RCW](#) to the extent it is required to indemnify the COLLEGE, the Board of Trustees of the COLLEGE, and their officers, employees, students and agents as provided herein.
23. **INDEPENDENT CONTRACTOR:** – The Parties intend that an independent contractor relationship is created by this CONTRACT. The CONTRACTOR and his or her employees or agents performing under this CONTRACT are not employees or agents of the COLLEGE. The CONTRACTOR, his or her employees, or agents performing under this CONTRACT will not hold himself/herself out as, nor claim to be, an officer or employee of the COLLEGE or of the State of Washington during the term of this CONTRACT, or act as attorney in fact, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee. Conduct and control of the work will be solely with the CONTRACTOR.
24. **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, COLLEGE may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The COLLEGE may deduct the amount owed by the CONTRACTOR to the accident fund from the account payable to the CONTRACTOR by the COLLEGE under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.
25. **INFRINGEMENTS:** – The CONTRACTOR agrees to defend, indemnify and hold harmless the COLLEGE against all claims for patent, copyright, or franchising infringements arising from the purchase, installation, or use of software, documentation, material or product ordered on this CONTRACT, and to assume all expense and damage arising from such claims.

26. **INSPECTION:** – In addition to any rights of access or inspection that may be included in any Special Terms and Conditions, the CONTRACTOR shall provide reasonable access to the CONTRACTOR's place of business, the CONTRACTOR records, and client records, to the COLLEGE and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the CONTRACTOR's performance and compliance with applicable Laws, and these CONTRACT terms during the term of this CONTRACT and for one (1) year following termination or expiration of this CONTRACT, six (6) years in relation to all records maintained per Records Maintenance clause at the termination or expiration of this CONTRACT.
27. **LICENSING, ACCREDITATION AND REGISTRATION:** – The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract
28. **LIENS, CLAIMS AND ENCUMBRANCES:** – The CONTRACTOR warrants and represents that all software, documentation, materials, equipment or services delivered under this CONTRACT are free and clear of all liens, claims, or encumbrances of any kind.
29. **LIMITATION OF AUTHORITY:** – Only the COLLEGE or COLLEGE'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 or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.
30. **LIMITATION OF LIABILITY:** – The COLLEGE shall not be liable to the CONTRACTOR or to any Subcontractor, regardless of the form of action, for any consequential, incidental, indirect, special or punitive damages, or for any claim or demand based on a Date Compliance issue, release of information, or patent, copyright, or other intellectual property right infringement. This section does not modify any specific agreement regarding liquidated damages or any other conditions as are elsewhere expressly agreed to between the Parties.
31. **NONDISCRIMINATION -**
- a. **Nondiscrimination Requirement.** During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
 - b. **Obligation to Cooperate.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
 - c. **Default.** Notwithstanding any provision to the contrary, COLLEGE may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until COLLEGE receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COLLEGE may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
 - d. **Remedies for Breach.** Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract 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 the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. COLLEGE shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe COLLEGE for default under this provision.
32. **ORDER IDENTIFICATION:** – All invoices, packing lists, packages, shipping notices, and other written documentation affecting any goods delivered under this CONTRACT shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this CONTRACT indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received. Shipments received without order numbers may be refused, 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, the COLLEGE's Special Terms and Conditions, the COLLEGE's Standard Terms and Conditions; the CONTRACTOR's terms proposed are rejected, unless otherwise provided in writing by the COLLEGE's Purchasing Department.
34. **OVERPAYMENTS AND ASSERTION OF LIEN:** – In the event that the COLLEGE establishes overpayments or erroneous payments made to the CONTRACTOR under this CONTRACT, the COLLEGE may secure repayment, plus interest, if any, through the filing of a lien against the CONTRACTOR's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the COLLEGE or by doing both.
35. **PACKING:** – No charges will be allowed for special handling, packing, wrapping, bags, containers, reels, etc. unless otherwise provided herein.
36. **PAYMENT, CASH DISCOUNT:** – the COLLEGE shall not process invoices for payment, and the period of computation for cash discount will not commence, until the COLLEGE receives a properly completed invoice or receives and accepts invoiced items, whichever is later and a valid [IRS](#)

[W-9 Form](#) is on-file. 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 the COLLEGE fails to make a timely payment, vendor may invoice for a minimum of \$1 or maximum of 1% per month on the amount overdue ([RCW 39.76.011\(1\)](#)). 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 30 days from date of receipt of a properly completed invoice or goods, whichever is later. the COLLEGE shall not honor drafts nor accept goods on a sight draft basis.

37. **PRICES:** – If price is not stated on this CONTRACT, it is agreed that the goods shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.
38. **PROPRIETARY INFORMATION:** – Supplier should clearly identify any material such as, but not restricted to, valuable formulae, design, drawing, and research data claimed to be exempt from public records request, as allowable by law ([RCW 42.56.270](#)), along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary and are subject to public record. the COLLEGE will give notice to the supplier of any request for disclosure of such information. Failure to so label such materials or to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the submitting supplier of any claim that such materials are, in fact, exempt.
39. **PUBLICITY:** – The CONTRACTOR agrees to submit to the COLLEGE for prior approval, all advertising and publicity matters relating to this CONTRACT wherein the COLLEGE's name is mentioned or language used from which the connection of the COLLEGE's name may, in the COLLEGE's judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the COLLEGE.
40. **RECORD MAINTENANCE:** – The CONTRACTOR shall maintain, at no additional cost, 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, these records shall be subject at all reasonable times to inspection, review or audit by the COLLEGE, personnel duly authorized by the COLLEGE, the Office of the State Auditor, and any federal and state officials so authorized by Law or this CONTRACT. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
41. **REJECTION:** – All goods or materials purchased under this CONTRACT are subject to approval by the COLLEGE. Any rejection of goods or material resulting from nonconformity to the terms, conditions, or specifications of this CONTRACT, whether held by the COLLEGE or returned, will be at the CONTRACTOR's risk and expense.
42. **RIGHTS AND REMEDIES:** – Failure of the COLLEGE to insist upon the strict performance of any term or condition of this CONTRACT or to exercise or delay the exercise of any right or remedy provided in this CONTRACT or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the CONTRACTOR from any responsibilities or obligations imposed by this CONTRACT or by law, and shall not be deemed a waiver of any right of the COLLEGE to insist upon the strict performance of this CONTRACT.
43. **RIGHT OF INSPECTION:** – The CONTRACTOR shall provide right of access to its facilities to the COLLEGE, 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.
44. **SAFETY AND HEALTH REQUIREMENTS:** – CONTRACTOR agrees to comply with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this CONTRACT will conform to and comply with said standards and regulations. CONTRACTOR further agrees to indemnify and hold harmless the COLLEGE from all damages assessed against the COLLEGE as a result of CONTRACTOR's failure to comply with the Acts and the standards issued thereunder and for failure of the items furnished under this order to so comply.
45. **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.
46. **SHIPPING INSTRUCTIONS:** – Unless otherwise instructed, all goods procured under this contract are to be shipped prepaid, FOB Destination, as defined in [RCW Title 62A.2-319](#). Where specific authorization is granted to ship goods FOB Shipping Point, the CONTRACTOR agrees to prepay all shipping charges, to route via the cheapest common carrier, and to bill the COLLEGE as a separate item on the invoice for the charges. the COLLEGE reserves the right to refuse COD shipments. Regardless of FOB point, the CONTRACTOR agrees to bear all risks of loss, injury, or destruction of goods and materials ordered pursuant to this CONTRACT that occurs prior to delivery to the COLLEGE, and such loss, injury, or destruction shall not release the CONTRACTOR from any obligation hereunder.
47. **TAXES:** – 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. Where required by state statute or Law, the CONTRACTOR shall pay for and maintain in current status all taxes that are necessary for CONTRACT performance. Unless otherwise indicated, the COLLEGE agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the CONTRACTOR shall be made for federal excise taxes and the COLLEGE agrees to furnish the CONTRACTOR with an exemption certificate where appropriate. 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 [WAC 458-20-247](#).

- 48. TERMINATION PROCEDURES:** – Upon termination of this Contract, the COLLEGE, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the COLLEGE 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.

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

- (i) Completed work and services for which no separate price is stated,
- (ii) Partially completed work and services,
- (iii) Other property or services that are accepted by the COLLEGE, and
- (iv) The protection and preservation of property, unless the termination is for default, in which case the COLLEGE shall determine the extent of the liability of the COLLEGE.

Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The COLLEGE may withhold from any amounts due the CONTRACTOR such sum as the College determines to be necessary to protect the COLLEGE against potential loss or liability.

The rights and remedies of the COLLEGE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the COLLEGE, 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. Assign to the COLLEGE, in the manner, at the times, and to the extent directed by the COLLEGE, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the COLLEGE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the COLLEGE to the extent the COLLEGE may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the COLLEGE and deliver in the manner, at the times, and to the extent directed by the COLLEGE any property which, if this CONTRACT had been completed, would have been required to be furnished to the COLLEGE;
- f. Complete performance of such part of the work as shall not have been terminated by the COLLEGE;
- g. Take such action as may be necessary, or as the COLLEGE may direct, for the protection and preservation of the property related to this CONTRACT which is in the possession of the CONTRACTOR and in which the COLLEGE has or may acquire an interest.

49. TREATMENT OF ASSETS:

- a. Title to all property furnished by the COLLEGE shall remain in the COLLEGE. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this CONTRACT, shall pass to and vest in the COLLEGE upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this CONTRACT, shall pass to and vest in the COLLEGE upon;
 - i. issuance for use of such property in the performance of this CONTRACT.
 - ii. commencement of use of such property in the performance of this CONTRACT.
 - iii. reimbursement of the cost thereof by the COLLEGE in whole or in part, whichever first occurs.
- b. Any property of the COLLEGE furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the COLLEGE, be used only for the performance of this CONTRACT.
- c. The CONTRACTOR shall be responsible for any loss or damage to property of the COLLEGE that result from the negligence or misconduct of the CONTRACTOR or from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d. If any the COLLEGE property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the COLLEGE and shall take all reasonable steps to protect the property from further damage.
- e. The CONTRACTOR shall surrender to the COLLEGE all property of the COLLEGE before settlement upon completion, termination or cancellation of this CONTRACT.
- f. All references to the CONTRACTOR under this clause shall also include CONTRACTOR's employees, agents or Subcontractors.

50. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL: – The COLLEGE 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 (SON) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the COLLEGE 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, the COLLEGE will download the current OFAC SON file and compare it to COLLEG's and statewide vendor files. In the event of a positive match, the COLLEGE reserves the right to:

- a. make a determination of "reasonability" before taking the positive match to a higher authority,
- b. seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match,
- c. comply with an OFAC investigation, if required, and/or
- d. if the positive match is substantiated, notify the contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment.

The COLLEGE 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.

51. WAIVER: – Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the COLLEGE.

52. WARRANTY:

- a. **Product:** The CONTRACTOR warrants all goods, products and services delivered under this order conform to specifications set forth in this CONTRACT and any request for proposal upon which this CONTRACT is based, shall be free from defects in material and workmanship, and shall be fit for the intended purpose. All goods, software, documentation, materials, products and services found defective shall be replaced upon notification by the COLLEGE. All costs of replacement, including shipping charges, shall be borne by the CONTRACTOR.
- b. **Price:** The CONTRACTOR warrants that prices of software, documentation, 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.
- c. **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.