

**STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meanings set forth below:

- 1.1 "Contractor" shall mean the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. "Contractor" shall also include any Subcontractor retained by the Contractor as permitted under the terms of this Contract.
- 1.2 "Secretary" shall mean the Secretary of the Department of Corrections and designees authorized to act on the Secretary's behalf.
- 1.3 "Department" shall mean the Department of Corrections (DOC) of the state of Washington, any division, section, office, unit or other sub-division of the Department, or any of the officers or other officials lawfully representing the Department.
- 1.4 "Subcontractor" shall mean one not in the employment of the Contractor who, under a separate contract with the Contractor, is performing all or part of the services under this Contract. Contractor shall remain responsible to the Department for any work required under the terms of this contract that is performed by a subcontractor under separate contract to Contractor.
- 1.5 "Contracts Administrator" shall mean the Administrator of Contracts and Legal Affairs or designee.
- 1.6 "Contracts and Legal Affairs" shall mean the Department of Corrections (DOC) headquarters contracting office, or successor section or office.

**2. ACCESS TO DATA**

The Contractor shall, at no additional cost, provide access to data generated under this Contract to the Department, the Washington State Joint Legislative Audit and Review Committee, and the Washington State Auditor. 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.

**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. (See Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28CFR Part 35.)

**4. 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 Department.

## 5. AMENDMENTS AND MODIFICATIONS

- 5.1 Amendments and modifications to this contract shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
- 5.2 Changes in the rate of compensation must be signed by both parties and shall not be effective until the first day of the month following the last date of signature of the amendment or until the effective date of the amendment if later than the date of last signature.
- 5.3 The Secretary may, at any time, by written notification to the Contractor, and without notice to any guarantor or surety, unilaterally amend the scope of work to be performed under the Contract, the period of performance, or the compensation to be paid to the Contractor. These unilateral changes shall be effective as set forth in the amendment or upon signature by the Contracts Administrator, if no date has been set forth.
- 5.4 The Contractor will be deemed to have accepted any such unilateral amendment unless, within fifteen (15) calendar days after the date the amendment is signed by the Contracts Administrator, the Contractor notifies the Contract Manager, in writing, of its non-acceptance of such unilateral change. The Contractor and the Department will then use good faith efforts to negotiate an amendment acceptable to both parties.
- 5.5 Failure to reach agreement shall constitute a dispute concerning a question of fact within the meaning of the Disputes provision contained in this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as amended. Contractor must continue to provide the contracted services, including any unilaterally amended services, during any period of non-acceptance or negotiation of a unilateral amendment.

## 6. ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor without prior written consent of the Department.

## 7. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

## 8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

8.1 "Confidential Information" as used in this section includes:

- i. All material provided to the Contractor by the Department that is designated as "confidential" by the Department;
- ii. All material produced by the Contractor that is designated as "confidential" by the Department; and
- iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

**8.2** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Department or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Department with its policies and procedures on confidentiality. The Department may require changes to such policies and procedures as they apply to this Contract whenever the Department reasonably determines that changes are necessary to prevent authorized disclosures. The Contractor shall make the changes within the time period specified by the Department. Upon request, the Contractor shall immediately return to the Department any Confidential Information that the Department reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

## **9. CONFLICT OF INTEREST/ETHICS**

- 9.1** Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Department 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 Contracts Administrator 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 or performance under this Contract.
- 9.2** In the event this Contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of the Department provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Contracts Administrator makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

## **10. CONSTRUCTION**

Nothing in this Contract shall be construed to create a right enforceable by or in favor of any third party.

## **11. COPYRIGHT PROVISIONS**

- 11.1** 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 Department. The Department shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Department effective from the moment of creation of such materials.
- 11.2** Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer

programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

- 11.3** For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to the Department 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 Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Department.
- 11.4** The Contractor shall use all reasonable effort to advise the Department, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.
- 11.5** The Department shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

## **12. COVENANT AGAINST CONTINGENT FEES**

- 12.1** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business.
- 12.2** The Department 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. The provisions of this section shall survive any termination or the expiration of this Contract.

## **13. DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing.

## **14. DISALLOWED CHARGES/DUPLICATE CHARGES/OVERPAYMENT REFUNDS**

- 14.1** The Contractor is not allowed to charge the Department for a Medicaid service. If the Department has erroneously paid for a Medicaid service charged by the Contractor, that payment is considered an overpayment and shall be deducted from the Contractor's future payments by the Department.
- 14.2** The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of the cost charged to other entities for the same service(s) nor are they a duplicate payment. If the charges are determined to be in excess of those costs charged to other entities or

a duplicate charge, the Department is entitled to an overpayment refund for the excess or duplicate charges.

## **15. ENTIRE AGREEMENT**

This Contract, all attachments, and future amendments hereto, constitute the entire agreement between the Contractor and the Department and no other statements or representations, written or oral, shall be deemed a part hereof.

## **16. FEDERAL IMMIGRATION REFORM AND CONTROL ACT (IRCA)**

During the performance of this Contract, the Contractor shall comply with all requirements of the federal Immigration Reform and Control Act (IRCA) and any regulations adopted by the Department of Justice Bureau of Immigration and Naturalization Services to implement the IRCA. The provisions of this paragraph shall be in addition to any other requirements set forth in the text of the Contract.

## **17. GOVERNING LAW**

This contract shall be construed and interpreted according to the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **18. HEALTH and SAFETY**

**18.1** Health. The Contractor shall ensure that all of its personnel assigned to DOC sites is trained in the requirements of Chapter 296-823 WAC, blood borne pathogens. Further, the Contractor shall provide all such personnel with protections from blood borne and other body fluid diseases that meet or exceed the WAC standards for such protection. If the Contractor is a health care provider whose duties include the medical or physical care of inmates or emergency or medical treatment of employees, the Contractor shall abide by the requirements of Chapter 296-823 WAC as well as standard medical practice.

**18.2** Safety. For all work performed under this Contract, the Contractor agrees to comply with Department policies and procedures relative to custody of inmates and security/operation of the institution such as, but not limited to, fingerprinting, photographs for identification purposes, and searches.

## **19. INDEMNIFICATION**

**19.1** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

**19.2** Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

**19.3** Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not

be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

**19.4** Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

**19.5** The provisions of this paragraph shall not apply to any act or omission by the Contractor for which the Department, in the text of this Contract, has agreed to defend and hold the Contractor harmless. The provisions of this section shall survive any termination or the expiration of this Contract.

## **20. INDEPENDENT CONTRACTOR STATUS**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor will not hold himself or herself out as, nor claim to be, an officer or employee of Washington State in the performance of this Contract. Conduct and control of the work required under this contract is solely with the Contractor.

## **21. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. The Department will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any Sub-contractor, or employee of the Contractor, which might arise under these industrial insurance laws during performance of duties and services under this Contract.

## **22. LICENSING AND ACCREDITATION STANDARDS**

The Contractor shall comply with all applicable local, state and federal licensing and accrediting standards, required by law and necessary in the performance of this Contract.

## **23. LIMITATION OF CONTRACTING AUTHORITY**

Only the Secretary, Secretary's designee, or Contracts Administrator 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 Secretary, Secretary's designee, or Contracts Administrator.

## **24. MAINTENANCE OF RECORDS**

**24.1** During the term of this Contract and for six (6) years following its termination or expiration, the Contractor shall maintain, and provide DOC or its designee, at no additional cost, with reasonable access to Contractors records sufficient to:

- i. Document performance of all services required by this Contract; and
- ii. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, performance and principals; and
- iii. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document the Contractor's invoices to DOC and all expenditures made by the Contractor to perform as required by this Contract.

- 24.2** 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.
- 24.3** Should an audit, conducted under the authority of this section, disclose that the Contractor has been paid by the Department in excess of the agreed upon costs (overpayment), or has been reimbursed by the Department for direct or indirect costs which are disallowed as a result of that audit, then, the Contractor shall, upon demand by the Department, repay such overpayment or reimbursement to the Department without requiring further legal action by the Department.
- 24.4** The provisions of this section shall survive termination or expiration of this Contract.

## **25. PUBLIC RECORDS ACT**

- 25.1** This Agreement and all records associated with the performance of this Agreement shall be available from the Department for inspection and copying by the public when required by the Public Records Act, Chapter 42.56 RCW (the "Act").
- 25.2** If records in the custody of the Contractor are needed by the Department to respond to a request under the Act, as determined by the Department, the Contractor agrees to make them promptly available to the Department. Upon request by the Department, the Contractor further agrees to provide a detailed index of records associated with its performance of the contract. This index will allow for more efficient and accurate identification of potentially responsive records.
- 25.3** If the Contractor considers any portion of any record associated with the Contractor's performance under this Agreement to be protected from disclosure under law, the Contractor shall clearly identify the specific information that it claims to be confidential or proprietary when the records are provided to the Department in response to a public records request. The Department retains sole discretion in the appropriateness and application of withholdings and redactions on all records.
- 25.4** If the Department receives a request under the Act to inspect or copy information identified by the Contractor as confidential or proprietary and the Department determines that release of the information is required by the Act or otherwise is appropriate, the Department's sole obligation shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the Department will release the requested information on the date specified with whatever withholdings and redactions it deems proper.
- 25.5** The Department is not obligated to claim any exemption from disclosure under the Act on behalf of the Contractor. The Department shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The Department shall not be liable to the Contractor for releasing any records in compliance with this section, in compliance with the Act, or in compliance with an order of a court of competent jurisdiction.

## **26. RECAPTURE OF FUNDS**

- 26.1** In the event that the Contractor fails to perform this contract in accordance with state laws and/or the provisions of this contract, the Department reserves the right to recapture funds in an amount

to compensate the Department for the noncompliance in addition to any other remedies available at law or in equity.

**26.2** Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Department. In the alternative, the Department may recapture such funds from payments due under this contract.

**26.3** Such right of recapture shall exist for a period not to exceed six years following contract termination. In the event that the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorneys' fees.

## **27. RETIREMENT BENEFIT SUSPENSION – PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)**

**27.1** The Contractor certifies by signing this Contract that that the Contractor is not a Public Employee Retirement System (PERS) retiree who retired early under the Public Employees Retirement System (PERS) RCW 41.40.630(3); and if it is found that the Contractor did retire early under the PERS, the Contractor's retirement benefits may be suspended for the duration of this Contract.

**27.2** Further, if the Contractor was a PERS retiree, the Contractor agrees to notify the Department of Retirement Systems (DRS), regarding the execution of this Contract, failure to do so is considered a material breach and may subject the Contractor to damages. In addition, the Contractor certifies that the Contractor does not have a beneficial interest in this Contract as defined in the Executive Ethics Board's Advisory Opinion 97-07).

## **28. NONDISCRIMINATION**

**28.1** During the performance of this contract, the Contactor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies.

**28.2** In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled, or terminated, in whole or in part, and the Contractor may be declared ineligible for further contracts with the Department. The Contractor may be given a reasonable time in which to cure this noncompliance. Any dispute shall be resolved in accordance with the "Disputes" procedure set forth herein.

## **29. PUBLICITY**

The Contractor agrees to submit to the Department all advertising and publicity matters relating to this Contract wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department'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 Department.

## **30. REGISTRATION WITH DEPARTMENT OF REVENUE**

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## **31. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Department, the Office of the

State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

## **32. RIGHTS AND REMEDIES**

The rights and remedies of the Department provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

## **33. SAFEGUARDING OF OFFENDER INFORMATION**

**33.1** The Contractor may use offender information gained by reason of this Contract only to perform work under the terms of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law, or with the prior written consent of the Department, offender, or offender personal representative.

**33.2** The Contractor agrees to abide by all present and future federal and state laws and regulations in maintaining the confidentiality of Department files and records, including Criminal History Record Information (CHRI). In the event CHRI is provided to the Contractor, the Contractor shall also abide by all present and future Department rules and regulations governing the use of CHRI.

**33.3** The provisions of this section shall survive any termination or expiration of this Contract.

## **34. SEVERABILITY**

The terms and conditions of this Contract are severable. 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.

## **35. SITE SECURITY**

While on Department premises, Contractor, its agents, employees, or subcontractors shall conform in all respects to site security requirements relative to custody of offenders and security operations, including but not limited to, background check, fingerprinting, photographs for identification, physical safety, fire, and security policies or regulations.

## **36. SUBCONTRACTING**

**36.1** Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval of the Contracts Administrator. If the Department approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Department in writing may:

- i. Require the Contractor to amend its subcontracting procedures as they relate to this Contract;
- ii. Prohibit the Contractor from subcontracting with a particular person or entity; or
- iii. Require the Contractor to rescind or amend a subcontract.

**36.2** In no event shall the existence of any subcontract operate to release or reduce the liability of the Contractor to the Department for any breach in the performance of the Contractor's duties. This

clause does not include contracts of employment between the Contractor and personnel assigned to work under this contract. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

### **37. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Contractor or the Contractor's staff shall be the sole responsibility of the Contractor.

### **38. TERMINATION**

**38.1 BY CONTRACTOR.** The Contractor may terminate this Contract by giving the Department written notice of such termination. No such termination shall be effective until sixty (60) days after the Department has received the Contractor's written notice of termination, or until such later date as established by the Contractor in the Contractor's written notice of termination. Contractor shall mail or deliver the Contractor's written notice of termination to the Contracts Administrator. If the Contractor terminates the Contract, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

**38.2 BY DEPARTMENT FOR CAUSE.** The Secretary may, by written notice, terminate this Contract in whole or in part, for failure of the Contractor to perform any of the Contract provisions. In such event, 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 the replacement Contract, i.e., cost of the competitive bidding, mailing, advertising, and staff time. If it is determined for any reason that the Contractor was not in default or that the default was beyond Contractor's or Sub-contractor's control, fault or negligence, then the Termination for Default shall convert to Termination for Convenience.

In the alternative, the Department upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Department may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Department to terminate the Contract.

**38.3 BY DEPARTMENT FOR CONVENIENCE.** The Secretary or designee may terminate this Contract, in whole or in part, when it is in the best interests of the Department. The Department shall give the Contractor written notice of termination at least five days in advance of the effective termination date. When a contract is terminated for convenience, the Department shall only pay, in accordance with the terms of this Contract, for services rendered prior to the effective date of termination.

**38.4 BY DEPARTMENT FOR NON-AVAILABILITY OF FUNDS.** If the funds the Department relied upon to establish this Contract are withdrawn or reduced, or if new or modified conditions are placed on such funds, the Secretary may terminate this Contract immediately. If this Contract is so terminated, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

### 39. TERMINATION PROCEDURES

39.1 Upon termination of this contract the Department shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department, and the amount agreed upon by the Contractor and the Department 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 Department; and
- iv. The protection and preservation of property, unless the termination is for default, in which case the Contracts Administrator shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Department may withhold from any amounts due the Contractor such sum as the Contracts Administrator determines to be necessary to protect the Department against potential loss or liability.

39.2 The rights and remedies of the Department provided in this "Termination Procedures" provision 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 Notice, the Contractor shall:

- i. Stop work under the contract on the date, and to the extent specified, in the notice;
- ii. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- iii. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- iv. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent Department may require, which approval or ratification shall be final for all the purposes of this clause;
- v. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the contract had been completed, would have been required to be furnished to the Department;
- vi. Complete performance of such part of the work as shall not have been terminated by the Department; and
- vii. Take such action as may be necessary, or as the Department 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 Department has or may acquire an interest.

### 40. TREATMENT OF PROPERTY

The Department, in addition to any other rights provided in this Contract, may require the Contractor

to deliver to the Department any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. In all such cases, this "Treatment of Property" provision shall apply.

- 40.1 Title to all property furnished by the Department shall remain in the Department. 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 Department 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 Department upon i) issuance for use of such property in the performance of this Contract, or ii) commencement of use of such property in the performance of this Contract, or iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
- 40.2 Any property of the Department furnished to the Contractor shall, unless otherwise provided herein or approved by the Department, be used only for the performance of this Contract.
- 40.3 The Contractor shall be responsible for any loss or damage to Department property that results from the negligence of the Contractor or the failure of the Contractor to maintain and administer that property in accordance with sound management practices.
- 40.4 If any Department property is lost, destroyed or damaged, the Contractor shall immediately notify the Department and shall take all reasonable steps to protect the property from further damage.
- 40.5 The Contractor shall surrender all Department property to the Department prior to settlement upon completion, termination, or cancellation of this Contract.
- 40.6 All equipment purchased by the Contractor for the Contractor's use under the terms of this Contract, that as defined in this Contract provision, is actually owned by the Department, shall be shipped or delivered to the institution/location designated by the Contract Manager for tagging and entry into the DOC Capital Asset Management System (CAMS) before distribution to the Contractor for use.

#### **41. UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES**

- 41.1 During the performance of this Contract, the Contractor shall comply with Chapter 39.19 RCW, as now existing or hereafter amended, any rule adopted under Chapter 39.19 by OMWBE and/or any policy or regulation adopted by the Department to effect agency compliance with Chapter 39.19 RCW.
- 41.2 If the Contractor fails to comply with any contract requirements relative to the utilization of minority and/or women-owned businesses, the Department may take any or all such actions available to the Department under Chapter 39.19 RCW.
- 41.3 If the Contractor prevents or interferes with any Subcontractor's compliance with Chapter 39.19 RCW, or submits false or fraudulent information to the Department regarding compliance, the Contractor shall be subject to a fine not to exceed one thousand dollars (\$1,000) in addition to any other penalties or sanctions prescribed by law.

#### **42. 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 Department.

#### **43. EQUALITY IN COMPENSATION**

**43.1** The Contractor must ensure that similarly employed individuals in its workforce are compensated as equals, consistent with the following:

Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

Contractor may allow differentials in compensation for its workers based in good faith on any of the following:

- i. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
- ii. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
- iii. A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

**43.2** This Contract may be terminated if the Department or the Department of Enterprise Services determines that the contractor is not in compliance with this provision.

#### **44. ACCESSIBILITY COMPLIANCE**

Contractor hereby warrants that any technology provided under this Agreement currently complies, and will continue to comply, with Washington State Office of Chief Information Officer (“OCIO”) Policy 188 (<http://ocio.wa.gov/policy/accessibility>) and Minimum Accessibility Standard 188.10 (<http://ocio.wa.gov/policy/minimum-accessibility-standard>). Contractor agrees to promptly respond to and resolve any complaint brought to its attention regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless the Washington State Department of Corrections from any claim arising out of Contractor’s failure to comply with the aforesaid requirements.