

GENERAL TERMS AND CONDITIONS

GOODS and PURCHASED SERVICES

1. Entire Agreement

The contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the Provision entitled "WARRANTIES OF PRODUCT" understandings, agreements, representations, or warranties not contained in this agreement or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or specifications of this contract will be effective without the written consent of both parties.

2. 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 College.

3. Non-Discrimination

During the performance of this contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies.

4. Non-Compliance with Non-Discrimination Laws

In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this contract may be rescinded, cancelled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the College. The Contractor shall, however, be given a reasonable time at the College's option in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

5. Subcontracting

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the College. Where a subcontract has been approved by the College as part of this contract, in no event shall the existence of such a subcontract operate to release or reduce the liability of the Contractor to the College for any breach in the performance of the Contractor's duties. The Contractor agrees that all subcontractors shall be agents of the Contractor, and the Contractor further agrees to hold the College harmless from omissions of the Contractor's subcontractors, their agents, or employees. The College shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or infringements of patent, trademark, copyright or franchise occasioned by the acts or omissions of the Contractor's subcontractors, their agents or employees.

6. 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 agent 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.

7. Warranties of Product

Contractor warrants that all goods and/or services supplied under this contract shall conform to all specifications and requirements herein, will be free from defects in material or workmanship, and will be merchantable and fit for the purpose for which such goods

and/or services are ordinarily employed. If a particular purpose is stated, the Contractor also warrants fitness for that particular purpose. Acceptance of any service and inspection incidental thereto by the College shall not alter or affect the obligations of the Contractor or the rights of the College. Contractor and College agree that this provision does not exclude, or in any way limit, other warranties provided for in this agreement or by law.

8. Licensing, Accreditation and Registration

The Contractor shall comply with applicable required local, state, and federal licensing, accreditation and registration requirements/standards, and permits necessary for the performance of this contract.

9. 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, or (ii) commencement of use of such property in the performance of this contract, or (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 which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- d. Upon loss or destruction of, or damage to, any College property, the Contractor shall notify the College thereof and shall take all reasonable steps to protect that property from further damage.
- e. The Contractor shall surrender to the College all property of the College prior to settlement upon completion, termination or cancellation of this contract.
- f. All reference to the Contractor under this clause shall also include Contractor's employees, agents and Subcontractors.

10. Right of Inspection

Upon request by the College, 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 that they may monitor and evaluate performance, compliance, and/or quality assurance under this contract.

11. Safeguarding of Information

The use or disclosure by any party of any information concerning the College for any purpose not directly connected with the administration of the College's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by prior written consent of the College.

12. Rights in Data

Unless otherwise provided, data which originates from this contract shall be "works for hire"

as defined by the U.S. Copyright law and shall be owned by the College. Data shall include, but not be limited to, 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.

Data which is delivered under the contract, but which does not originate therefrom, shall be transferred to the College with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise the College, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The College shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The College shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

13. Registration with Department of Revenue

The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

14. Insurance Coverage

If requested by the College, the Contractor shall provide or purchase industrial or other requested insurance coverage prior to performing work under this contract. The College will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor, or any employee of either, which might arise under the industrial insurance laws relating to performance of duties or services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify the College and guarantee payment of such amounts.

15. Advance Payments Prohibited

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the College.

16. Payment Terms and Invoice Provisions

- a. Except as otherwise provided herein, such payments shall be due and payable within thirty (30) calendar days (Net 30 Days) after receipt of such goods or services or after receipt of properly prepared invoices, whichever is later.
- b. The Contractor will submit properly certified itemized invoices and/or vouchers in duplicate to the College. Invoices shall provide and itemize as a minimum: (1) Parts and labor breakdown for applicable projects; (2) applicable discounts; (3) applicable taxes; and (4) total charge.
- c. The purchase order or contract number must appear on all invoices, bills of lading, packages, and correspondence relating to this contract. All payments to the Contractor shall be remitted by mail. The College shall not honor drafts, nor accept goods on a sight draft basis.
- d. Any credits due the College may be applied against the Contractor's invoices with

appropriate information attached, upon giving of prior notice required herein, if any, by the College to the Contractor.

17. 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 product, services or expenses.

18. Limitation of Authority

Only the College's delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the College's Purchasing Office.

19. Changes and Modifications

The College may, at any time, by written notification to the Contractor and without notice to any known guarantor or surety, make changes in the goods needed and/or general scope of the services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of Contractor's receipt of the notice of such change; Provided, however, that the Contract Administrator may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

20. Venue / Governing Law

This contract shall be construed, governed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court of Snohomish County. The Contractor by execution of this contract, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

21. Indemnification and Hold Harmless

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend, protect and hold harmless the State of Washington, Edmonds Community College, its trustees, officers, directors, employees, agents, students, volunteers and assigns from the and against all claims, suits or actions arising out of or resulting from the Contractor performance or non-performance of this Contract, including but not limited to any alleged injury to persons or property and any alleged infringement of any copyright patent, trademark, tradename, or confidentiality.

22. Independent Capacity of the Contractor

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and subcontractors (if any), and their employees or agents, performing under this contract are not employees or agents of the College and are independent contractors. The Contractor and his or her employees or agents performing under the terms and conditions of this contract are not employees or agents of the College. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the College or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work or product under the contract terms and conditions will be solely

with the Contractor.

23. Records, Documents, and Reports

The Contractor shall maintain books, records, documents, data and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract and the performance of the requirements described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for the period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review and audit by the College, personnel duly authorized by the College, the Office of the State Auditor and federal and state officials so authorized by law, rule, regulation, contract or agreement. In any litigation, claim or audit as 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 has been resolved.

24. Protection of Any Confidential Information

Vendor's use or disclosure of any confidential information concerning the College for Vendor gain or for any purpose not directly connected with performance of this Contract is strictly prohibited. Vendor shall conform with all applicable requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99, and Title IX – Clery Act.

25. Waiver of Default

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waive of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the College's Contract Administrator and attached to the original contract.

26. Severability

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable. If any term, condition or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

27. Termination of Contract

Termination for Cause or Default:

In the event the College determines the Contractor has failed to comply with the terms and conditions of this Contract in a timely manner, the College has the right to suspend or terminate this Contract or any portion thereof. Before suspending or terminating the Contract, the College shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated. In the event of termination, 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, e.g., cost of the competitive bidding, mailing, advertisement, and staff time. The College reserves the right to suspend all or part of the Contract, withhold funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the College to terminate the Contract. A termination shall be deemed to be 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.

Termination for Convenience:

Except as otherwise provided in this contract the College may, by ten (10) business days written notice beginning of the second day after the mailing, terminate this Contract in whole or in part when it is in the best interests of the College. If this Contract is so terminated, the College shall be liable for payment required under the terms and conditions of this Contract for services rendered prior to the effective date of termination.

Termination for Withdrawal of Authority:

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, the College may terminate this Agreement by seven (7) calendar days written notice to the Contractor. No penalty shall accrue to the College in the event this section shall be exercised. This section only shall not be construed to permit the College to terminate this Agreement in order to acquire similar services from a third party.

Termination for Non-Allocation of Funds / Lack of Funding:

If funds are not allocated to the College, the College at its option may terminate this Agreement by seven (7) calendar days written notice to Contractor or work with the Contractor to arrive at a mutually acceptable resolution of the situation. The College will not be obligated to pay any further charges including the net remainder of any agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. The College agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to the College in the event this section shall be exercised. This section only shall not be construed to permit the College to terminate this Contract in order to acquire similar services from a third party.

Termination for Conflict of Interest:

The College may terminate this Agreement by written notice to the Contractor if the College determines, after due notice and examination, that any party has violated RCW 42.52, Ethics in Public Service or any similar statute involving the Contractor in the procurement of, or performance under, this contract. In the event 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 the 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. The existence of facts upon which the Contract Administrator makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

28. 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 provided Purchaser has paid for such Products. The section titled "Treatment of Assets" shall apply in such property transfer. In addition to the procedures set forth, if the College terminates this Agreement, the Contractor shall follow any procedures the College reasonably specifies in the College's notice of termination.

The College shall pay to the Contractor the agreed-upon price, if separately stated, for completed work or services, or for any products received and accepted by the College, and the amount agreed upon by the Contractor and the College for (i) completed work and services or any product for which no separate price is stated, (ii) partially completed work and services and any product, (iii) other property or services which are accepted by the College, and (iv)

the protection and preservation of property, unless the terminations is 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 the 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 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 Purchaser, Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, products, services, or facilities except as may be necessary for completion of such portion of the work under the 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 subcontractors;
- D. Settle all outstanding liabilities, and all claims arising out of such termination of orders and subcontract, 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 extend directed by the College any property which, if the 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, and;
- 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 which the College has or may acquire an interest.

29. Disputes

Except as otherwise provided in this contract, when a bona fide dispute arises between the College and the Contractor and it cannot be resolved, either party may request a dispute hearing with the College Vice President for Finance and Operations or their designee. Either party's request for a dispute hearing must be in writing and clearly state:

- a. The disputed issue(s),
- b. The relative positions of the parties, and
- c. The Contractor's name, address, and College contract number

These requests must be submitted to the College Vice President for Finance and Operations or their designee within ten (10) business days after either party receives notice of the disputed issue(s). 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 (ADR) method in addition to the dispute resolution procedure outlined above.

30. Attorney's Fees

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

31. Advertising / Advertisements

Contractor shall not advertise, release or publish information concerning this contract in any form or media for Vendor gain or profit without prior written consent from the College's Purchasing Office.

32. Using College's Name, Logo, or other Identifying Marks

The Contractor recognizes and acknowledges that all rights and goodwill in the College's name, logo, mascot, motto and other identifying marks are the exclusive property of the College. Unless specifically required in a contract with the College, the Contractor may not include the Colleges' name, logo, mascot, motto or phrases, or other identifying marks on its website or other media or press releases without advance written permission from the College's Director of Communications and Public Information.

33. Force Majeure /Catastrophe

With the exception of payment obligations for prior performance under this Contract, neither Contractor nor the College shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, pandemics, civil disorder or disturbances, strikes vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.

34. Construction and Effect

A waiver of any failure to perform under the contract shall neither be construed or nor constitute waiver of any subsequent failure. Article and section headings are used solely for the convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any Exhibits referred to herein are made a part of the contract by their reference. The contract may be executed in several counterparts, each of which shall be deemed an original.

35. Gratuities and Gifts

In accordance with RCW 42.52, Ethics in Public Service, College employees may accept no gifts, gratuities or any item of economic value for personal gain. The Contractor agrees to offer no such items to any College employee.

36. Price Warranty

In submitting a proposal, Contractor warrants that the prices charged to the College do not exceed those prices charged by Contractor to any other customers purchasing same or like goods and/or service(s) in comparable scope and complexity.

37. Delays

Contractor shall immediately notify College of any delays in timeline(s) or in receiving services.

38. OSHA and WISHA Requirements

Contractor agrees to comply with applicable conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA) for any manufactured or provided items and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA) Chapter 19.28 RCW and WAC 296-24 and the standards and regulations issued there under and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of supplier's failure to comply with the acts and standards there under, and for the failure of the items furnished under this order to so comply.

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

The Contractor must comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35. This law provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public

accommodations, state and local government services and telecommunications.

40. Right to Know Act

Contractor is responsible for compliance with applicable provisions of the Right to Know Act, OCGA 45-22.

41. Workers' Compensation

The Contractor will at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes and regulations to the full extent applicable. The College will not be held responsive in any way for claims filed by the Contractor or its employees for services performed under the terms of this contract.

42. In-State Preference/Reciprocity

The WA State Legislature finds that in-state preference clauses used by other states in procuring goods and services have a discriminatory effect against Washington vendors with resulting harm to this state's revenues and the welfare of this state's citizens. Washington Laws, 1983 Chapter 183, (RCW 43.19) is intended to promote fairness in state government procurement by requiring that, when appropriate, Washington will exercise reciprocity with those states having in-state preferences, and it shall be liberally construed to that effect. Upon issuance of a competitive solicitation, and for purpose of evaluating bid prices, the College's Solicitation Coordinator shall add an amount equal to the appropriate percentage as appropriate to each vendor's bid submitted from that state.