

26-RFP-004

Appendix B

General Terms and Conditions

This Appendix B sets out the General Terms and Conditions for inclusion in the final Contract, but are not the totality of terms, conditions, and pricing that will be included in the Contract presented to ASVs during the contract negotiation phase of this solicitation.

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1. Definition of Terms

The following terms as used throughout these General Terms and Conditions shall have the meanings set forth below. Any terms that are not defined in this Schedule B but are defined elsewhere in the RFQQ will have the meanings set forth elsewhere in the RFQQ.

“Business Days” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Confidential Information” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, or agency security data.

“Contract” shall mean these General Terms and Conditions, all schedules and exhibits, Statements of Work, and all amendments hereto, along with additional terms, conditions, and pricing set forth in the form of the Contract provided by WaTech and finalized during the contract negotiation phase of the RFQQ process. The Contract will also incorporate the RFQQ, Vendor's Response to the RFQQ, and the applicable CSP Contract(s).

“Effective Date” shall mean the first date the Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to the Contract.

“Order” means any order form, enrollment, or purchase order issued by Vendor or Purchaser documenting specific CSP Products sold to, and the prices payable for such CSP Products, by Purchaser in accordance with this Contract and subject to the applicable CSP Contract.

“Price” shall mean charges, costs, discounts, markups, rates, and/or fees charged to Purchaser for the Services or the CSP Products under the Contract and shall be paid in United States dollars.

“Product(s)” shall mean any Vendor-supplied equipment, Software, and documentation.

“Proprietary Information” shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Purchased Services” or **“Services”** shall mean those Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in the Contract or a Statement of Work.

“Purchaser” shall mean Washington Technology Solutions (or **“WaTech”**) or any of the officers or other officials lawfully representing Purchaser.

“Purchaser [Project or Business] Manager” shall mean the person designated by Purchaser who is assigned as the primary contact person whom the Vendor Account Manager shall work with for the duration of the Contract and as further defined in the section titled **Purchaser [Project or Business] Manager**.

“Purchaser Contract Administrator” shall mean that person designated by Purchaser to administer the Contract on behalf of Purchaser.

“Purchaser Contracting Officer” shall mean *[name of Purchaser’s officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in the Contract, an authorized representative of the Purchaser Contracting Officer acting within the limits of his/her authority.

“RCW” shall mean the Revised Code of Washington.

“Response” shall mean Vendor’s Response to Purchaser’s RFQQ.

“RFQQ” shall mean the Request for Qualifications and Quotation used as a solicitation document to establish the Contract, including all its amendments and modifications.

“Specifications” shall mean the technical and other specifications set forth in the RFQQ, along with any additional specifications set forth in Vendor’s Response, the CSP Contracts, SOWs, or any Orders.

“Statement of Work” or **“SOW”** shall mean a separate statement of the work for Services to be accomplished by Vendor under the terms and conditions of the Contract.

“Subcontractor” shall mean one not in the employment of Vendor, who is performing all or part of the business activities under the Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“Vendor” shall mean *[Vendor]*, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under the Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of the Contract.

“Vendor Account Manager” shall mean a representative of Vendor who is assigned as the primary contact person whom the Purchaser *[Project or Business]* Manager shall work with for the duration of the Contract and as further defined in the section titled **Vendor Account Manager**.

“Vendor Contracting Officer” shall mean *[title of Vendor officer with signature authority]*, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in the Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

“WaTech” shall mean the same as Purchaser.

“Work Product” shall mean data and products produced under the Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

2. Term

2.1. Term of Contract

2.2. It is anticipated that the Initial Term of the resulting Contract will be through July 1, 2028 commencing on the effective date of the Contract. It is anticipated that the contract may be extended at WaTech’s sole option for up to an additional five (5) years.

- 2.3. Term of Orders. The term of any Order executed pursuant to the Contract shall be set forth in the Order. The term of the Order shall not exceed the term of the Contract. The Order may be terminated in accordance with the termination sections of the Contract or as mutually agreed between the parties.
- 2.4. Term of Statements of Work (SOWs). The term of any SOW executed pursuant to the Contract shall be set forth in the SOW. The term of the SOW shall not exceed the term of the Contract. The SOW may be terminated in accordance with the termination sections of the Contract or as mutually agreed between the parties.

3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of the Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of the Contract or any extension thereof. Further, the terms, conditions and warranties contained in the Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Ownership/Rights in Data; Vendor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of the Contract.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Vendor agrees to provide the Services and resell to WaTech the CSP Products applying the Prices set forth in the Contract. No other Prices shall be charged by Vendor for implementation of Vendor's Response.
- 4.2. Prices may not be increased during the initial term of the Contract.
- 4.3. If Vendor reduces its Prices for any of the Services during the term of the Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.4. At least ninety (90) calendar days before the end of the then-current term of the Contract, Vendor may propose Service rate increases by written notice to the Purchaser Contract Administrator. Price adjustments will be taken into consideration by the Purchaser Contract Administrator when determining whether to extend the Contract.
- 4.5. Vendor agrees that all the Prices, terms, warranties, and benefits provided in the Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of the Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by the Contract, Vendor shall be obligated to provide the same to Purchaser for subsequent purchases.

5. Advance Payment Prohibited

No advance payment shall be made for the Software and Services furnished by Vendor pursuant to the Contract except allowable subscriptions or equipment warranties. In the case of allowable pre-payment

of subscriptions or warranties, in no event shall the subscription period for which payment in advance is made exceed twelve (12) month payment in advance.

6. Taxes

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

7. Invoice and Payment

- 7.1. Vendor will submit properly itemized invoices to *[title of person to receive invoices]* at *[provide appropriate address]*. Invoices shall provide and itemize, as applicable:
 - a) Contract number;
 - b) Itemization of the CSP Products or Services along with short descriptions;
 - c) Quantity or units charged;
 - d) Order number for CSP Products;
 - e) SOW number for Services;
 - f) Vendor name, address, phone number, and Federal Tax Identification Number;
 - g) Description of CSP Products sold or Services provided (including, as applicable, the delivery, installation, or subscription start date for such Services);
 - h) Date(s) that Services were provided;
 - i) Price for Services, including the applicable markup, discount applied and net price payable to the CSP for the CSP Products;
 - j) Applicable taxes;
 - k) Other applicable charges;
 - l) Total invoice Price; and
 - m) Payment terms including any available prompt payment discounts.
- 7.2. Purchaser shall pay undisputed invoices within thirty (30) days of receipt. Purchaser may withhold payment of any amounts it disputes in good faith by notifying Vendor and paying the undisputed amounts.
- 7.3. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 7.4. The Purchaser Contract number, Order number for CSP Products and SOW number for Services must appear on all bills of lading, packages, and correspondence relating to the Contract.
- 7.5. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

- 7.6. In no event (other than where charges are being addressed in the disputes process under this Contract) will Purchaser be liable for any charges (including taxes, surcharges, or regulatory charges) that are first invoiced more than ninety (90) days after the charge was incurred.
- 7.7. In the event Purchaser is entitled to or receives from the applicable CSP any credits, discounts, financial concessions, and price reductions in the Prices during the Term under the CSP Contract (each a “**CSP-issued Credit**”), and Purchaser elects to apply such CSP-issued Credit to any obligations that remain outstanding with respect to the charges arising the Contract, or any Order, Purchaser may direct the applicable CSP to issue such CSP-issued Credits on behalf of Purchaser to Vendor, and upon written notice to Vendor, direct that any such CSP-issued Credits be applied to Purchaser’s future remaining payment obligations for any CSP Products.
- 7.8. From the charges received from Purchaser, Vendor shall promptly submit the payments to the applicable CSP as and when required by such CSP in accordance with the CSP Contracts. Vendor shall indemnify Purchaser for any and all losses and liabilities arising from claims by any CSP attributable to Vendor's failure to pay or delay in paying charges due the applicable CSP for CSP Products ordered under the Contract, provided that Purchaser has paid Vendor the underlying charges for such CSP Products when due in accordance with the Contract.
- 7.9. Subcontractor Payments Reporting Requirements. The Contract is subject to compliance tracking using the State’s business diversity management system, Access Equity (B2Gnow). Access Equity is web-based and can be accessed at the Office of Minority and Women’s Business Enterprises at <https://omwbe.diversitycompliance.com/>. The Vendor and all Subcontractors shall report and confirm receipt of payments made to the Vendor and each Subcontractor through Access Equity. The Vendor may contact *[contact to be provided at time of contract]* at *[means of contact]* for technical assistance in using the Access Equity system. User guides and documentation related to Vendor and Subcontractor access to and use of Access Equity are available online at <https://omwbe.wa.gov/access-equity-help-center>. The Purchaser reserves the right to withhold payments from the Vendor for non-compliance with this section. For purposes of this section, Subcontractor means any subcontractor working on the Contract, at any tier and regardless of status as certified WMBE or Non-WMBE.

The Vendor shall:

- a) Register and enter all required Subcontractor information into Access Equity no later than fifteen (15) days after the Purchaser creates the Contract Record.
- b) Complete the required user training (two (2) one-hour online sessions) no later than twenty (20) days after the Purchaser creates the Contract Record.
- c) Report the amount and date of all payments (i) received from the Purchaser, and (ii) paid to Subcontractors, no later than thirty (30) days from issuance of each payment made by the Purchaser to the Vendor, unless otherwise specified in writing by the Purchaser, except that the Vendor shall mark as “Final” and report the final Subcontractor payments, into Access Equity no later than thirty (30) days after the final payment is due the Subcontractor(s) under the Contract, with all payment information entered no later than sixty (60) days after end of fiscal year.

8. Overpayments to Vendor

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under the Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

Vendor's Responsibilities

9. Purchased Services under Statements of Work and CSP Products under Orders

- 9.1. All Services shall be performed pursuant to the terms of the Contract and shall be documented in an SOW established between Purchaser and Vendor. The terms and conditions of any SOW cannot conflict with the terms and conditions of the Contract. In the event of any conflict, the Contract shall prevail.
- 9.2. All CSP Products shall be provided pursuant to the terms of Purchaser-approved Orders. The terms and conditions of any Order cannot conflict with the terms and conditions of the Contract. In the event of any conflict, the Contract shall prevail. Orders for CSP Products will be prepared, processed, and approved in accordance with the order and quoting processes set forth in the Contract.

10. Commencement of Services

No Services shall be performed by Vendor until an SOW for such Services is executed by Vendor and Purchaser and is received by Vendor.

11. Ownership/Rights in Data

- 11.1. Any custom additions and modifications to Vendor's Preexisting Material (defined below) and all data and work products produced pursuant to this Contract and any Order shall collectively be called "**Work Product.**" Purchaser shall have and retain all ownership, right, title, interest and all intellectual property rights to Work Product. To the extent that any such rights in the Work Product vest initially with the Vendor by operation of law or for any other reason, Vendor hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to Purchaser. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 11.2. Vendor warrants that it is the owner of the Work Product and Preexisting Material and that it has full right to assign and license the same to Purchaser.
- 11.3. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.
- 11.4. During the term of the Contract and any time thereafter, Vendor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section, and when so obtained or vested to maintain, renew, and restore the same.
- 11.5. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall

not copy, disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

- 11.6. Vendor hereby grants to Purchaser a non-exclusive, royalty-free, irrevocable license to use, publish, translate, reproduce, deliver, perform, display, and dispose of materials and know how that are delivered under the Contract, but that do not originate therefrom (“**Preexisting Material**”).
- 11.7. Vendor shall exert best efforts to advise Purchaser of all known or potential infringements of publicity, privacy or of intellectual property rights of the Preexisting Material furnished under the Contract. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under the Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

12. Site Security

12.1. Facility Access

Vendor understands that all Purchaser’s building entrances are controlled for access. In the event Vendor performs any work at any of Purchaser’s premises, Vendor agrees to become familiar with Purchaser’s building and security policies, and further agrees to observe and comply with all Purchaser’s building and security policies or procedures. Vendor understands that in order to obtain access to Purchaser’s premises, if applicable, Vendor must be issued a security badge by Purchaser. Vendor shall provide certain personal information, including valid government issued photo identification, prior to obtaining a security badge. Vendor further understands that Purchaser will collect and retain such personal information for so long as the Contract is in effect and such individual(s) has access to the premises. Purchaser reserves the right to deny an application for a security badge. Failure of Vendor to comply with Purchaser’s security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser’s facilities. Upon the earlier of termination of the Contract, or suspension or termination of access to Purchaser’s facilities, Vendor shall return all security badges.

12.2. Remote Access to Network

Vendor understands that in order to obtain remote access to Purchaser’s Local Area Network (LAN), email, or supported computing environments through a remote access connection (“**Remote Access**”), Vendor must comply with Purchaser’s Remote Access policy and any other applicable security policies or procedures. Vendor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser.

12.3. Safety

Vendor shall observe and comply with OSHA regulations, all applicable safety and environmental laws and regulations, and all of Purchaser’s rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies.

12.4. Information and System Security

Vendor acknowledges and understands that access to Purchaser’s computer networks may be necessary to perform the work under the Contract, and as a result Purchaser has placed or may

place special confidence and trust in the Vendor in providing such access. Vendor acknowledges and understands that any access to Purchaser's computer networks shall be limited, restricted and conditioned upon Vendor's compliance with certain Purchaser policies and practices. Vendor warrants that it will perform all work for or on behalf of Purchaser in full compliance with the Information Services Board Security Policy, Standards and Guidelines, the Use of DIS Network policy attached to the Contract, and any other security documents and best practices provided by Purchaser ("**Security Policies**").

Vendor, having agreed upon Purchaser's Security Policies as the acceptable standard for network security, warrants that it shall exercise its best efforts in the execution of the Security Policies with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, self help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of Purchaser's network, system or data.

13. Vendor Commitments, Warranties and Representations

Any written commitment by Vendor within the scope of the Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of the Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, including discounts and options, committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

14. Compliance with Standards

Vendor represents that it shall use commercially reasonable efforts to ensure all Software and elements thereof, including but not limited to, documentation, shall meet and be maintained by Vendor to conform to applicable industry standards.

15. Corporate Warranty

Vendor hereby represents and warrants that the execution, performance and delivery of the Contract does not conflict with or constitute any default under any contract, agreement or other obligation of Vendor, including but not limited to license agreements, development agreements, assignment provisions or other contractual obligations.

16. Minority and Women's Business Enterprise (MWBE) Participation

With each invoice for payment and within thirty (30) days of the Purchaser Contract Administrator's request, Vendor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Vendor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under the Contract. Vendor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with the Contract's **Review of Vendor's Records** section.

17. Protection of Purchaser's Confidential Information

17.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with the Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under

either chapter 42.17 RCW or other state or federal statutes (“**Confidential Information**”). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of the Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out the Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser’s express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 17.2. Immediately upon expiration or termination of the Contract, Vendor shall, at Purchaser’s option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser’s Confidential Information.
- 17.3. Vendor shall maintain a log documenting the following: (i) the Confidential Information received in the performance of the Contract; (ii) the purpose(s) for which the Confidential Information was received; (iii) who received, maintained and used the Confidential Information; and (iv) the final disposition of the Confidential Information. Vendor’s records shall be subject to inspection, review or audit in accordance with the section titled **Review of Vendor’s Records**.
- 17.4. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through the Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 17.5. Violation of this section by Vendor or its Subcontractors may result in termination of the Contract and demand for return of all Confidential Information, monetary damages, or penalties.

18. Resale Authorization and CSP Account Ownership

- 18.1. Vendor represents and warrants that it is, and covenants that it shall remain for the term of the Contract authorized by the CSPs to order, resell, manage, and fully participate in the CSP resale program as required to provide the Services, resell CSP Products to Purchaser, and perform Vendor's obligations under the Contract.
- 18.2. Vendor represents and warrants that (i) Purchaser shall retain full legal and administrative ownership of all CSP payer accounts, management accounts, and CSP tenant and subscription accounts established for Purchaser under the Contract; (ii) Purchaser shall possess and retain sole and exclusive control over the root, global administrator, management, and privileged accounts used with Purchaser's CSP Products sold or supported by Vendor; and (iii) Vendor shall not be deemed the account owner or administrator of WaTech's CSP accounts for any purpose.
- 18.3. When requested by Purchaser, Vendor shall:
 - (i) promptly (and in any event within ten (10) Business Days) take all actions reasonably necessary to facilitate the transfer or reassignment to Purchase or its third-party designee of the CSP accounts used to purchase, pay for, or administer Purchaser's

accounts with the CSP that were set up or used by Vendor, including billing, support, and administrative rights;

- (ii) provide to Purchaser or its third-party designee all relevant billing identifiers, tenant IDs, payer account numbers, and administrative contact details; and
- (iii) reasonably cooperate with Purchaser and the CSPs to perform any other tasks reasonably required by CSP to complete the account transfer and assignments described above.

Contract Administration

19. Legal Notices

- 19.1. Any notice or demand or other communication required or permitted to be given under the Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail or by electronic mail, to the parties at the contact information provided in this section. For purposes of complying with any provision in the Contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.

[Notice addresses to be added to the Contract]

- 19.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 19.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to the Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

20. Purchaser *[Project or Business]* Manager

Purchaser shall appoint *[name]* who will be the Purchaser *[Project or Business]* Manager for the Contract and will provide oversight of the activities conducted hereunder. Purchaser *[Project or Business]* Manager will be the principal contact for Vendor concerning business activities under the Contract. Purchaser shall notify Vendor, in writing, when there is a new Purchaser *[Project or Business]* Manager assigned to the Contract.

21. Vendor Account Manager

Vendor shall appoint an Account Manager for Purchaser’s account under the Contract who will provide oversight of Vendor activities conducted hereunder. The Vendor Account Manager will be the principal point of contact for Purchaser concerning Vendor’s performance under the Contract. Vendor shall notify the Purchaser Contract Administrator and Purchaser *[Project or Business]* Manager, in writing, when there is a new Vendor Account Manager assigned to the Contract.

22. Section Headings

The headings in this Appendix B are used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

23. Independent Status of Vendor

In the performance of the Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by the Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

24. Governing Law

The Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

25. Subcontractors

Vendor may, with prior written permission from the Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of the Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of the Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Vendor's Records** sections of the Contract shall apply to all Subcontractors. For purposes of clarity, Purchaser consents to the release by Vendor of CSP Products sold and delivered by the CSPs identified in the Contract.

26. Extention Pending Negotiations With Respect to Amending or Extending the Contract

So long as the parties are negotiating in good faith for changes in the Contract then the term of the Contract shall be automatically extended on the same terms and conditions such that termination occurs not less than six (6) months after the end of such good faith negotiations. The end of good faith negotiations may be declared in writing by either party. Following such declaration, there shall be a thirty (30) day period in which either party may provide written notice to the other party of its intent to terminate the Contract at the end of the extended Contract term. The purpose of this section is to ensure that neither party is forced to arbitrarily conclude negotiations for a lack of time to address budgetary or operational concerns and to provide an opportunity for provision of timely termination notice after negotiations are concluded.

27. Assignment

- 27.1. The Contract, any SOWs, any Orders, or any rights or duties arising under either the Contract or any SOWs or Orders may not be assigned, transferred, or delegated by Vendor without the prior written consent of the Purchaser Contract Administrator in their

sole discretion. Any purported assignment without the prior written consent of the Purchaser Contract Administrator will be null and void. The Contract and its Orders will be binding on the parties and their respective successors and permitted assigns.

- 27.2. Purchaser may assign the Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

28. Publicity

- 28.1. The award of the Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.

Without the prior review and express written consent of Purchaser, Vendor will not make any reference to Purchaser as endorsing Vendor's business in any literature, promotional material, brochure, sales presentation, or the like, regardless of method of distribution.

- 28.2. Vendor agrees to submit to Purchaser all advertising, sales promotion, and other publicity materials relating to the Contract and Services furnished by Vendor wherein Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the internet, and other communication media in existence or hereinafter developed without the express written consent of Purchaser *prior* to such use.

29. Review of Vendor's Records

- 29.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to the Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of the Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of the Contract. Records involving matters in litigation related to the Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of the Contract, whichever is later.
- 29.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During the Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 29.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 29.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review

unless the cost or any other material issue under the Contract is calculated or derived from these factors.

30. Right of Inspection

Vendor shall provide right of access to its facilities to Purchaser, or any of Purchaser's 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 the Contract.

General Provisions

31. Patent and Copyright Indemnification

- 31.1. Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Service or Work Product supplied hereunder, or Purchaser's use of the Service or Work Product within the terms of the Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:
- a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 31.2. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Service or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Service or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Service or Work Product and provide Purchaser a refund. In the case of Work Product, Vendor shall refund to Purchaser the entire amount Purchaser paid to Vendor for Vendor's provision of the Work Product. Purchaser will pay only those charges that were payable prior to the date of such return.
- 31.3. Vendor has no liability for any claim of infringement arising solely from:
- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
 - b) Modification of the Service or Work Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or
- unless the claim arose against Vendor's Service or Work Product independently of any of these specified actions.

32. Save Harmless

Vendor shall defend, indemnify, and save Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents.

Vendor's obligation to defend, indemnify, and save Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

33. Insurance

- 33.1. Vendor shall, during the term of the Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by the Contract, Vendor shall provide written notice of such to Purchaser within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in the Contract's termination.
- 33.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
 - e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon subsection 33.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
 - f) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 33.3 below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.
- 33.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (i) continue such coverage for six (6) years beyond the expiration or termination of the Contract, naming Purchaser as an additional insured and providing Purchaser with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of the Contract provide for Purchaser's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to Purchaser, in the amount of \$1 million, during the initial and any subsequent terms of the Contract, and for six (6) years beyond the expiration or termination of the Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at Purchaser's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in the Contract means a written commitment by a federally insured financial institution to pay

all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Purchaser (the beneficiary) of a written demand therefor.

- 33.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference the Contract number and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.
- 33.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 33.6. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 33.7. Vendor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of the Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in the Contract's termination.
- 33.8. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in the Contract.

34. Industrial Insurance Coverage

If required under Washington law, Prior to performing work under the Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of the Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under the Contract.

35. Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

36. Antitrust Violations

Vendor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with the Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under the Contract.

37. Compliance with Civil Rights Laws

During the performance of the Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, the Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** section, and Vendor may be declared ineligible for further contracts with Purchaser.

38. Severability

If any term or condition of the Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of the Contract are declared severable.

39. Waiver

Waiver of any breach of any term or condition of the Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of the Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

40. Treatment of Assets

- 40.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under the Contract, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked work, only the applicable license, not title, is passed to and vested in Purchaser.
- 40.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of the Contract.
- 40.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 40.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 40.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of the Contract.
- 40.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

41. Vendor's Proprietary Information

Vendor acknowledges that Purchaser is subject to chapter 42.56 RCW and that the Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that

disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

42. Standard Terms of Vendor

Except for the CSP Contracts as they relate to use and performance of specific CSP Products, no additional terms, provisions, or conditions of any business form that either party may use will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Contract.

43. Spoliation- Notice of Potential Claims

Each party shall promptly notify the other party of all potential third-party claims that arise or result from the Contract. Each party shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence.

Disputes and Remedies

44. Disputes

In the event a dispute arises under the Contract, it shall be handled by a “**Dispute Resolution Panel**” in the following manner. Each party to the Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under the Contract that are not affected by the dispute.

- 44.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 44.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, the facts, Contract terms and applicable statutes and rules, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto.
 - d) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 44.3. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under the Contract that are not affected by the dispute.
- 44.4. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

45. Non-Exclusive Remedies

The remedies provided for in the Contract shall not be exclusive but are in addition to all other remedies available under law.

46. Failure to Perform

If Vendor fails to perform any substantial obligation under the Contract, Purchaser shall give Vendor written notice of such Failure to Perform. If after fifteen (15) calendar days from the date of the written notice Vendor still has not performed, then Purchaser may withhold all monies due and payable to Vendor, without penalty to Purchaser, until such Failure to Perform is cured or otherwise resolved.

47. Limitation of Liability

- 47.1. The parties agree that neither Vendor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in the Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 47.2. Neither Vendor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, Purchaser, or their respective Subcontractors.
- 47.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 47.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

48. Termination for Default

- 48.1. If either Purchaser or Vendor violates any material term or condition of the Contract or fails to fulfill in a timely and proper manner its obligations under the Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within fifteen (15) days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, the Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by Purchaser to terminate the Contract.

- 48.2. In the event of termination of the Contract by Purchaser, Purchaser shall have the right to procure the Services that are the subject of the Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and (iii) any other costs to Purchaser resulting from Vendor's breach. Purchaser shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe Purchaser for Vendor's default.
- 48.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 48.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

49. Termination for Convenience

When, at the sole discretion of Purchaser, it is in the best interest of the State, the Purchaser Contracting Officer may terminate the Contract, including all Statement(s) of Work, in whole or in part, by fourteen (14) calendar days' written notice to Vendor. If the Contract is so terminated, Purchaser is liable only for payments required by the terms of the Contract, Purchaser-approved Orders for CSP Products, or any SOW for Services received and accepted by Purchaser prior to the effective date of termination.

50. 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 the Contract and prior to normal completion, Purchaser may terminate the Contract by seven (7) calendar days' written notice to Vendor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate the Contract in order to acquire similar Services from a third party.

51. Termination for Non-Allocation of Funds

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

52. Termination for Conflict of Interest

Purchaser may terminate the Contract by written notice to Vendor if Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event the Contract is so terminated, Purchaser shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches the Contract.

53. Termination Procedure

- 53.1. In addition to the procedures set forth below, if Purchaser terminates the Contract, Vendor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 53.2. Upon termination of the Contract, Purchaser, in addition to any other rights provided in the Contract, may require Vendor to deliver to Purchaser any property or Work Service specifically produced or acquired for the performance of such part of the Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 53.3. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if the Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of the Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 53.4. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

54. Covenant Against Contingent Fees

- 54.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.

In the event Vendor breaches this section, Purchaser shall have the right to either annul the Contract without liability to Purchaser or, in Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.