

WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS  
GENERAL TERMS AND CONDITIONS

**1. DEFINITIONS**

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

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

**2. ADVANCE PAYMENTS PROHIBITED**

In compliance with RCW 43.88.160, no payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by the Department.

**3. AGENCY**

No party shall make any representations or warranties or incur any liability on behalf of the other. No party is the agent, representative or partner of the other party. The parties agree that Contractor is an independent contractor, that neither Contractor nor its employees, subcontractors and/or agents are employees of DOC and that DOC shall not, on their behalf: withhold income or other taxes; provide Industrial Insurance; participate in group insurance plans which may be available to employees of DOC; participate in or contribute to any public employees retirement system; accumulate vacation leave or sick leave; or provide unemployment compensation coverage. Neither Contractor nor its employees, subcontractors and/or agents are employees of DOC, and accordingly, none of them are entitled to any of the compensation, benefits, rights, or privileges of employees of DOC.

**4. AMENDMENTS AND MODIFICATIONS**

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

**5. AMERICANS WITH DISABILITIES ACT (ADA)**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. (See Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35.)

**6. ASSIGNMENT**

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

**7. ATTORNEYS' FEES**

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

**8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

- 8.1.1. All material provided to the Contractor by the Department that is designated as “confidential” by the Department;
  - 8.1.2. All material produced by the Contractor that is designated as “confidential” by the Department;
  - 8.1.3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
  - 8.1.4. All Category 3 and Category 4 information based on the classification categories developed by the Washington State Office of the Chief Information Officer.
- 8.2. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Department or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Department with its policies and procedures on confidentiality. The Department may require changes to such policies and procedures as they apply to this Contract whenever the Department reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Department. Upon request, the Contractor shall immediately return to the Department any Confidential Information that the Department reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- 8.3. The Contractor shall notify DOC within one (1) working day of discovery of any unauthorized use or disclosure of any Confidential Information and shall take necessary steps to mitigate the harmful effects of such use or disclosure.
- 8.4. Any breach of this provision may result in termination of the contract and the demand for return or destruction of all Confidential Information. The Contractor agrees to indemnify and hold harmless DOC for any damages related to the Contractor’s unauthorized disclosure or use of Confidential Information.
- 8.5. The Contractor agrees to abide by all present and future federal and state laws and regulations in maintaining the confidentiality of DOC files and records, including Criminal History Record Information (CHRI). In the event CHRI is provided to the Contractor, the Contractor shall also abide by all present and future DOC rules and regulations governing the use of CHRI.

- 8.6. The Contractor may use Confidential Information related to individuals gained by reason of this Contract only to perform work under the terms of this Contract. The Contractor shall not disclose, transfer, or sell any such Confidential Information to any party, except as provided by law, or with the prior written consent of the Department, individual, or individual's personal representative.
- 8.7. The provisions of this section shall survive any termination or expiration of this Contract.

## 9. CONFLICTS OF INTEREST

- 9.1. Contractor represents and warrants to DOC that neither the Contractor, nor any of its affiliates or authorized subcontractors, nor any of their employees, has, shall have, or shall:
  - 9.1.1. Acquire, any contractual, financial, business or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to DOC, or to individuals under the jurisdiction of DOC or their friends and family under this Contract, or otherwise create an appearance of impropriety with respect to this Contract.
  - 9.1.2. Use the authority provided or to be provided under this Contract to improperly obtain financial gain for Contractor, any of its Affiliates, any of their employees, or any member of the immediate family of any such employee.
  - 9.1.3. Use any DOC Confidential Information acquired in connection with this Contract to obtain financial gain for Contractor, any of its Affiliates, any of their employees, or any member of the immediate family of any such employee.
  - 9.1.4. Accept anything of value based on an understanding that the actions of Contractor, any such Affiliates or any such employees on behalf of DOC would be influenced thereby; and neither Contractor nor any of its Affiliates shall attempt to influence any DOC employee by the direct or indirect offer of anything of value.
  - 9.1.5. Pay or agree to pay any person, other than bona fide employees working solely for Contractor or such Affiliates or any of Contractor's subcontractors, any fee, commission, percentage, brokerage fee, contingent fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Contract. If Contractor fails to comply with this Section, DOC shall have the right to either cancel this Contract without liability to DOC or, in DOC's discretion, recover from Contractor the full amount of such commission, percentage, brokerage fee, contingent fee, gift or other consideration.
- 9.2. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Department may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by the Contracts Administrator that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of or performance under this Contract.

## 10. CONSTRUCTION

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

**11. CONTRACTOR REPRESENTATIONS AND WARRANTIES.**

Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at any time during the performance of this Contract, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify DOC, in writing, of such breach.

- 11.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- 11.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 11.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- 11.4. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither Contractor nor its principals or affiliates presently are nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 11.5. WAGE VIOLATIONS. Contractor represents and warrants that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- 11.6. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 11.7. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- 11.8. WASHINGTON SMALL BUSINESS. If Contract was awarded to Contractor based on Contractor's small business status, then Contractor represents and warrants that Contractor qualifies as a Washington Small Business as defined in RCW 39.26.010.
- 11.9. CERTIFIED VETERAN-OWNED BUSINESS. If Contract was awarded to Contractor based on Contractor's veteran-owned status, then Contractor represents and warrants that Contractor qualifies as a Certified Veteran-Owned Business as defined and set for in Contractor's Bidder's Certification.
- 11.10. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or Purchase Order under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.
- 11.11. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions of RCW 42.52.150 including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to DOC employees.
- 11.12. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that Contractor is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of Contractor's information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.
- 11.13. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 11.14. ADVERTISING AND ENDORSEMENT. Contractor understands and acknowledges that neither DOC nor the State of Washington are endorsing Contractor's Goods and/or Services or suggesting that such Goods and/or Services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to DOC or the State of Washington in any promotional material without the prior written consent of DOC.
- 11.15. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.

- 11.16. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Contract.
- 11.17. OPERATIONAL CAPABILITY. Contractor represents and warrants that Contractor has the operational and financial capability to perform the Contract.

## **12. COPYRIGHT PROVISIONS**

- 12.1. To the extent permitted by Title 17 of the United States Code, Contractor's work product is deemed a work for hire and all copyrights in such work product are the property of DOC. In the event it is determined that any work product is not a work for hire under United States law, Contractor hereby assigns to DOC all copyrights to such works when and as created.
- 12.2. The Department shall receive prompt written notice of each claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

## **13. COVENANT AGAINST CONTINGENT FEES**

- 13.1. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business.
- 13.2. The Department shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee. The provisions of this section shall survive any termination or the expiration of this Contract.

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

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

**15. DISPUTES**

The parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

**16. EQUALITY IN COMPENSATION**

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

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

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

16.1.1. A seniority system, a merit system, a system that measures earnings by quantity or quality of production, a bona fide job-related factor or factors, or a bona fide regional difference in compensation levels.

16.1.2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity, not based on or derived from a gender-based differential, and accounts for the entire differential.

16.1.3. A bona fide regional difference in compensation level must be: consistent with business necessity, not based on or derived from a gender-based differential, and account for the entire differential.

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

**17. FEDERAL IMMIGRATION REFORM AND CONTROL ACT (IRCA)**

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



**18. GOVERNING LAW**

The Contract, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Contract or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the Laws of the state of Washington (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any claim against DOC shall be initiated by Contractor within one (1) year after the claim arises, or be barred. Any suit or proceeding relating to this Contract shall be brought only in the State courts located in Thurston County, Washington. The parties each consent to the sole and exclusive personal jurisdiction and venue of the state courts located in Thurston County, Washington.

**19. HEALTH AND SAFETY**

- 19.1. Policies, Procedures, and Protocols. For all work performed under this Contract, and at all times while on Department premises, the Contractor shall abide by Department policies, procedures, and protocols concerning health and safety on Department premises.
- 19.2. Bloodborne Pathogens. The Contractor shall ensure that all personnel assigned to Department sites is trained in the requirements of Chapter 296-823 WAC, bloodborne pathogens. Further, the Contractor shall provide all such personnel with protections from blood borne and other body fluid diseases that meet or exceed the WAC standards for such protection. If the Contractor is a health care provider whose duties include the medical or physical care of individuals or emergency or medical treatment of employees, the Contractor shall abide by the requirements of Chapter 296-823 WAC as well as standard medical practice.

**20. INDEMNIFICATION**

- 20.1. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.
- 20.2. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.
- 20.3. Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.
- 20.4. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

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

## 21. INDUSTRIAL INSURANCE COVERAGE

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

## 22. INFORMATION TECHNOLOGY ACCESSIBILITY COMPLIANCE

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

## 23. INSURANCE

- 23.1. **Required Coverages.** At Contractor's sole cost and expense, Contractor shall procure and maintain in effect from and after the Effective Date and for the duration of the Contract the insurance coverages described in the attached **Attachment A(1)**. Insurance may be maintained with one or more carriers, each of which must: (a) be authorized to do business in the State of Washington or be eligible surplus lines insurers acceptable to DOC and having agents in Washington upon which service of process may be made; and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency). Any insurance or self-insurance available to DOC shall be in excess of, and non-contributing with, any insurance that Contractor is required to procure and maintain. Contractor hereby waives its right of subrogation with respect to DOC, and each policy must include a waiver of subrogation in favor of DOC and the State. Contractor's insurance policies shall apply on a primary basis. To the extent that claims are paid under any insurance coverage resulting in a reduction of the remaining coverage amounts, Contractor shall procure additional insurance as needed to continually meet and maintain the coverage amounts set forth on **Attachment A(1)**.

- 23.2. **Additional Insureds and Evidence of Coverage.** By endorsement to all liability policies, except for the Professional Liability/Errors & Omissions and Cyber Liability insurance and Industrial Insurance, DOC and the State shall be named as additional insureds for all liability arising from this Contract. On or before the Effective Date, thereafter upon each insurance policy renewal, and otherwise promptly following DOC's request from time-to-time, Contractor shall provide DOC Contract Manager with certificates of insurance, together with copies of all applicable endorsements (by endorsement cross-liability of all

insureds), evidencing Contractor's compliance with the requirements set forth in this Contract. If at any time during the period when insurance is required by this Contract, an insurer fails to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify DOC and immediately replace such insurance with insurance meeting this Contract requirements set forth herein. Within ten (10) business days following Contractor's receipt of DOC's written request, Contractor shall provide (or cause to be provided) to DOC a certified copy of any insurance policies that are required under this Contract.

- 23.3. **Claims-Made Coverage.** If and to the extent any insurance coverage required under this Contract is purchased on a "claims-made" basis, such insurance must: (a) cover the acts or omissions of Contractor and any subcontractors, as applicable, up through and including the date that this Contract has terminated and any Transition Periods have expired; and (b) be continuously maintained by Contractor, with full prior acts coverage, for at least six (6) years beyond the date that this Contract has terminated and any Transition Periods have expired.
- 23.4. **Notice of Cancellation.** Contractor shall procure (or cause to be procured) endorsement(s) to its insurance policies that identify DOC as a scheduled party to receive written notice thirty (30) days in advance of the cancellation of any insurance required hereunder.
- 23.5. **Subcontractor Insurance.** If Contractor elects to have an approved subcontractor provide any Services to DOC, prior to providing any such Services, Contractor must furnish to DOC a certified copy of the applicable insurance policy or policies reflecting coverages of the type and amount agreed upon by Contractor and DOC. Additionally, if an approved subcontractor provides Support and Maintenance Services, Contractor's insurance policies must specifically cover all of such subcontractor's Support and Maintenance Services, and Contractor must provide documentation from the applicable underwriter, acceptable to DOC in its sole discretion, confirming such coverage.

## 24. LICENSING AND ACCREDITATION STANDARDS

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

## 25. LIMITATION OF CONTRACTING AUTHORITY

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

## 26. MAINTENANCE OF RECORDS

- 26.1. During the term of this Contract and for six (6) years following its termination or expiration, the Contractor shall maintain, and provide, at no additional cost, DOC or its designee, the Washington State Joint Legislative Audit and Review Committee, the Office of the State Auditor, and federal and state officials so authorized by law, in order to

monitor and evaluate performance, compliance, and quality assurance under this contract, with reasonable access to Contractor's records sufficient to:

- 26.1.1. Document performance of all services required by this Contract; and
  - 26.1.2. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, performance and principals; and
  - 26.1.3. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document the Contractor's invoices to DOC and all expenditures made by the Contractor to perform as required by this Contract.
- 26.2. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- 26.3. Should an audit, conducted under the authority of this section, disclose that the Contractor has been paid by the Department in excess of the agreed upon costs (overpayment), or has been reimbursed by the Department for direct or indirect costs which are disallowed as a result of that audit, then, the Contractor shall, upon demand by the Department, repay such overpayment or reimbursement to the Department without requiring further legal action by the Department.
- 26.4. The provisions of this section shall survive termination or expiration of this Contract.

**27. NO CONSTRUCTION AGAINST DRAFTER**

The parties agree that any principle of construction or rule of Law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Contract.

**28. NONDISCRIMINATION**

- 28.1 During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- 28.2 Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- 28.3 Notwithstanding any provision to the contrary, Agency may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency receives notification that Contractor, including any subcontractor, is cooperating with the

investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Agency may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- 28.4 Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.

## 29. PREA - CUSTODIAL AND SEXUAL MISCONDUCT

These Contract provisions shall apply to any person having contact with incarcerated individuals under Department of Corrections jurisdiction, hereinafter referred to as "Individual" or "Individuals." This includes, but is not limited to, Contractor and Contractor's employees, agents, and subcontractors.

### A. Authorities

In the performance of services under this Contract, Contractors shall comply with all federal and state laws and Department of Corrections (DOC) policies regarding sexual misconduct, including, but not limited to, the Prison Rape Elimination Act of 2003 (PREA); RCW 72.09.225, Sexual misconduct by state employees, contractors; RCW 9A.44.010, Definitions; RCW 9A.44.160 Custodial sexual misconduct in the first degree; RCW 9A.44.170, Custodial sexual misconduct in the second degree; DOC 490.800, Prevention and Reporting of Sexual Misconduct; DOC 490.850, Response to Investigation of Sexual Misconduct, and DOC 610.025, Sexual Abuse, Sexual Assault, and Staff Sexual Misconduct. The laws and regulations cited above are publicly available online.

### B. Definitions

1. Sexual Misconduct includes, but is not limited to, Individual-on-Individual sexual assault, sexual abuse, and consensual sex acts. It also includes Custodial Sexual Misconduct, Custodial Misconduct of a Sexual Nature, and Sexual Harassment as defined below.
2. Custodial Sexual Misconduct includes, but is not limited to, the following acts directed toward any Individual and performed by DOC staff, contract workers, volunteers, or any other person having direct contact with Individuals:
  - a. Engaging in sexual intercourse with an Individual. Sexual intercourse includes vaginal intercourse, anal intercourse, and oral intercourse as well as the

penetration of an Individual's vagina or anus with an object, when such penetration is not performed for the purpose of providing medical care or is not authorized by DOC policy for the purpose of maintaining security, or allowing an Individual to engage in sexual intercourse, as defined above, with any contract worker or volunteer.

- b. Without a legitimate penological purpose, intentionally physically touching, either directly or through clothing, the genitalia, anus, groin, thighs, or buttocks of an Individual or the breasts of a female Individual.
- c. Without a legitimate penological purpose, compelling or permitting an Individual to touch, either directly or through clothing the genitalia, breasts, or buttocks of an employee, contract worker, or volunteer.
- d. Kissing an Individual, or allowing oneself to be kissed by an Individual, (this does not include an uninvited surprise kiss by an Individual).
- e. Knowingly exposing one's genitals, breasts, or buttocks to an Individual.
- f. Observing without legitimate penological purpose an Individual's partially or fully naked body or an Individual engaging in a sexual act with him/herself or another Individual (not to include inadvertent or unavoidable observation).
- g. Making threats, bribes, or acts of coercion toward an Individual for the purpose of causing an Individual to engage in any of the acts prohibited in this section.
- h. Taking one or more substantial steps toward engaging in or performing any of the acts prohibited in this section.
- i. Helping another person perform any of the acts prohibited in this section by acting or failing to act to aid in the commission of such act, with the knowledge that the action or inaction will promote or facilitate the prohibited act.

3. Custodial Misconduct of a Sexual Nature includes but is not limited to:

- a. Staff, Contractor, vendor, or volunteer-on-Individual sexual harassment; inappropriate relationships; exchange of personal information or items of financial or sentimental value; threatening, intimidating, coercing, or using abusive language towards an Individual for other than legitimate corrections purposes; cross gender pat searches; and
- b. Failing to report suspected or known sexual misconduct or other acts prohibited by this Contract provision; and discouraging, preventing, or otherwise interfering with good faith reporting of sexual misconduct where an Individual is the alleged victim.

4. Sexual Harassment

- a. Making comments about an Individual's body intended to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person present; and
- b. Making other gender-based sexually oriented or demeaning statements or gestures.

C. Contractor Requirements include, but are not limited to:

1. Adhering to DOC's zero tolerance standard for sexual misconduct, whether or not consensual.
2. Maintaining boundaries and professionalism at work and when in direct contact with Individuals.
3. Ensuring that all Contractor and Contractor's employees, agents, subcontractors, and volunteer staff who have unsupervised access to Individuals have PREA/Sexual Misconduct training that includes:
  - a. DOC policies on Prevention and Reporting of Sexual Misconduct, DOC 490.800 and Response to Investigation of Sexual Misconduct, DOC 490.850;
  - b. The meaning of DOC jurisdiction;
  - c. The prohibitions against engaging in behaviors described in Section B, Definitions, above;
  - d. Signs of sexual misconduct in both victims and predators;
  - e. Reporting requirements and investigation procedures for suspected or known instances of sexual misconduct;
  - f. The resources available to Individual/victims of sexual misconduct;
  - g. The confidentiality requirements associated with assisting Individual/victims; and
  - h. The consequences of failing to conform to all requirements of this Section C, which include, but are not limited to:
    - 1) Removal of person(s) from proximity to Individuals;
    - 2) Removal of person(s) from contract work at DOC;
    - 3) Contract termination;
    - 4) Criminal and or civil prosecution;
    - 5) Liability for damages to the Individual/victim.
4. Ensuring that all Contractor and Contractor's employees, agents, subcontractors, and volunteer staff who have limited unescorted contact with individuals under DOC's

jurisdiction sign the "PREA Acknowledgment" and return the form to DOC's Contract Manager.

The "PREA Acknowledgment" is available at the following link:

<https://doc.wa.gov/docs/forms/03-478.pdf>

5. Ensuring that all Contractor and Contractor's employees, agents, subcontractors, and volunteer staff who only provide services to individuals on community supervision are provided with access to the "Information for Staff, Contract Staff and Volunteers" brochure, which is available at the following link:

<https://www.doc.wa.gov/corrections/prea/resources.htm#publications>

### **30. PUBLIC RECORDS ACT**

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



with this section, in compliance with the Act, or in compliance with an order of a court of competent jurisdiction.

### **31. PUBLICITY**

The Contractor agrees to submit to the Department all advertising and publicity matters relating to this Contract wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department.

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

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

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

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

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

### **34. RIGHTS AND REMEDIES**

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

### **35. SITE SECURITY**

For all work performed under this Contract, and at all times while on Department premises, Contractor shall comply with Department policies, procedures, and security requirements related to the custody of Individuals and the safe and secure operation of the facility. Such policies, procedures, and requirements include, but are not limited to, background checks, fingerprinting, photographs for identification purposes, and searches of person and property.

### **36. SUBCONTRACTING**

36.1. Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without first obtaining the written approval of the

Contracts Administrator. If the Department approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Department in writing may:

- 36.1.1. Require the Contractor to amend its subcontracting procedures as they relate to this Contract;
  - 36.1.2. Prohibit the Contractor from subcontracting with a particular person or entity; or
  - 36.1.3. Require the Contractor to rescind or amend a subcontract.
- 36.2. In no event shall the existence of any subcontract operate to release or reduce the liability of the Contractor to the Department for any breach in the performance of the Contractor's duties. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this Contract are carried forward to any subcontracts.
- 36.3. Contractor shall submit reports in a form, system, or format to be provided by the Department, at reasonable intervals prescribed by the Department, regarding work under this Contract performed by Subcontractors and the portion of contract funds expended for work performed by Subcontractors, including, but not limited to, diverse businesses.

## 37. SUBCONTRACTOR PAYMENTS REPORTING

- 37.1. If Contractor utilizes subcontractors in the performance of this Contract, then this 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/>. Contractor and all Subcontractors shall report and confirm receipt of payments received by the Contractor and made to each Subcontractor through Access Equity. The Contractor may contact [docclacontracts@doc1.wa.gov](mailto:docclacontracts@doc1.wa.gov) for technical assistance in using the Access Equity system. DOC reserves the right to withhold payments from the Contractor 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 women or minority owned business entity (WMBE) or Non-WMBE.
- 37.2. The Contractor shall:
- 37.2.1. Register and enter all required Subcontractor information into Access Equity no later than 15 days after DOC creates the Contract Record.
  - 37.2.2. Complete the required Contract Compliance Training (two (2) one-hour online sessions) no later than 20 days after the parties execute this contract. The training may be found at: <https://omwbe.diversitycompliance.com/>.

- 37.2.3. Report the amount and date of all payments received from DOC, and paid to Subcontractors, no later than 10 days from issuance of each payment from DOC to the Contractor, unless otherwise specified in writing by DOC, except that the Contractor shall mark as "Final" and report the final Subcontractor payment(s) 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 June 30<sup>th</sup> (end of fiscal year) of the year received from DOC.
- 37.2.4. Monitor contract payments and respond promptly to any requests or instructions from DOC or system-generated messages to check or provide information in Access Equity.
- 37.2.5. Coordinate with Subcontractors, or DOC when necessary, to resolve promptly any discrepancies between reported and received payments.
- 37.2.6. Respond to reasonable requests from DOC for additional information to be provided electronically through Access Equity.
- 37.2.7. Require each Subcontractor to: (i) register in Access Equity and complete the required user training; (ii) verify the amount and date of receipt of each payment from the Contractor or a higher tier Subcontractor, if applicable, through Access Equity; (iii) report payments made to any lower tier Subcontractors, if any, in the same manner as specified herein; (iv) respond promptly to any requests or instructions from the Contractor or system-generated messages to check or provide information in Access Equity; and (v) coordinate with Contractor, or DOC when necessary, to resolve promptly any discrepancies between reported and received payments.

37.3. Utilization of Small and Diverse Businesses

This contract contains an aspirational 5% Small and Diverse Business Goal, involving any of the following categories of businesses:

- OMWBE certified businesses
- Veteran Owned Businesses (VOB)
- Small, Mini or Micro businesses (Small Businesses)

Contractor is expected to make genuine efforts to meet or exceed the above aspirational goals in this contract. Contractor may count their own participation and any participation from subcontractors towards aspirational goals on this contract.

**38. TAXES**

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

**39. TERMINATION**

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

39.2. BY DEPARTMENT FOR CAUSE. The Secretary may, by written notice, terminate this Contract in whole or in part, for failure of the Contractor to perform any of the Contract provisions. In such event, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, i.e., cost of the competitive bidding, mailing, advertising, and staff time. If it is determined for any reason that the Contractor was not in default or that the default was beyond Contractor's or Sub-contractor's control, fault or negligence, then the Termination for Default shall convert to Termination for Convenience.

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

39.3. BY DEPARTMENT FOR CONVENIENCE. The Secretary or designee may terminate this Contract, in whole or in part, when it is in the best interests of the Department. The Department shall give the Contractor written notice of termination at least five (5) days in advance of the effective termination date. When a contract is terminated for convenience, the Department shall only pay, in accordance with the terms of this Contract, for services rendered prior to the effective date of termination.

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

**40. TERMINATION PROCEDURES**

40.1. Upon termination of this contract the Department shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department, and the amount agreed upon by the Contractor and the Department for:

- 40.1.1. Completed work and services for which no separate price is stated;
  - 40.1.2. Partially completed work and services;
  - 40.1.3. Other property or services that are accepted by the Department; and
  - 40.1.4. The protection and preservation of property, unless the termination is for default, in which case the Contracts Administrator shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Department may withhold from any amounts due the Contractor such sum as the Contracts Administrator determines to be necessary to protect the Department against potential loss or liability.
- 40.2. The rights and remedies of the Department provided in this "Termination Procedures" provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. After receipt of a notice of termination, and except as otherwise directed by the Notice, the Contractor shall:
- 40.2.1. Stop work under the contract on the date, and to the extent specified, in the notice;
  - 40.2.2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
  - 40.2.3. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - 40.2.4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent Department may require, which approval or ratification shall be final for all the purposes of this clause;
  - 40.2.5. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the contract had been completed, would have been required to be furnished to the Department;
  - 40.2.6. Complete performance of such part of the work as shall not have been terminated by the Department; and
  - 40.2.7. Take such action as may be necessary, or as the Department may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which the Department has or may acquire an interest.

#### **41. THIRD-PARTY BENEFICIARIES**

The Contract entered into between the Parties is for the sole benefit of the Parties hereto and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature under or by reason of this Contract.

#### **42. TREATMENT OF PROPERTY**

- 42.1. The Department, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. In all such cases, this "Treatment of Property" provision shall apply.
- 42.2. Title to all property furnished by the Department shall remain in the Department. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Department upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Department upon i) issuance for use of such property in the performance of this Contract, or ii) commencement of use of such property in the performance of this Contract, or iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
- 42.3. Any property of the Department furnished to the Contractor shall, unless otherwise provided herein or approved by the Department, be used only for the performance of this Contract.
- 42.4. The Contractor shall be responsible for any loss or damage to Department property that results from the negligence of the Contractor or the failure of the Contractor to maintain and administer that property in accordance with sound management practices.
- 42.5. If any Department property is lost, destroyed, or damaged, the Contractor shall immediately notify the Department and shall take all reasonable steps to protect the property from further damage.
- 42.6. The Contractor shall surrender all Department property to the Department prior to settlement upon completion, termination, or cancellation of this Contract.
- 42.7. All equipment purchased by the Contractor for the Contractor's use under the terms of this Contract, that as defined in this Contract provision, is actually owned by the Department, shall be shipped or delivered to the institution/location designated by the Contract Manager for tagging and entry into DOC's Capital Asset Management System (CAMS) before distribution to the Contractor for use.

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

- 43.1. During the performance of this Contract, the Contractor shall comply with Chapter 39.19 RCW, as now existing or hereafter amended, any rule adopted under Chapter 39.19 by OMWBE and/or any policy or regulation adopted by the Department to effect agency compliance with Chapter 39.19 RCW.

- 43.2. If the Contractor fails to comply with any contract requirements relative to the utilization of minority and/or women-owned businesses, the Department may take any or all such actions available to the Department under Chapter 39.19 RCW.
- 43.3. If the Contractor prevents or interferes with any Subcontractor's compliance with Chapter 39.19 RCW, or submits false or fraudulent information to the Department regarding compliance, the Contractor shall be subject to a fine not to exceed one thousand dollars (\$1,000) in addition to any other penalties or sanctions prescribed by law.

**44. WAIVER**

No delay or omission by a party to exercise any right occurring upon any non-compliance or default by the other party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

**ATTACHMENT A(1)  
REQUIRED INSURANCE COVERAGES**

Required (YES/NO)	Type of Insurance Coverage	Minimum Policy Limits Per Occurrence/Claim	Annual Aggregate	Additional Requirements
YES	Commercial General Liability	\$1,000,000	\$2,000,000	The policy must include a waiver of subrogation in favor of DOC.
YES	Professional Liability/Errors & Omissions	\$2,000,000	\$2,000,000	The policy must include a waiver of subrogation in favor of DOC.
YES	Industrial Insurance (Workers Compensation)	Per state law requirements	Per state law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease. The policy must include a waiver of subrogation in favor of DOC. The policy shall cover all Contractor's employees, including as may be required of an "employer" as defined in Title 51 RCW, and shall be in full compliance with Title 51 RCW.
YES	Employer's Liability	<ul style="list-style-type: none"> <li>· Each Accident: \$1,000,000</li> <li>· Disease, Each Employee: \$1,000,000</li> <li>· Disease, Policy Limit: \$1,000,000</li> </ul>	N/A	
YES	Umbrella or Excess Liability	\$2,000,000	\$2,000,000	For Industrial Insurance, Employer's Liability, Commercial General Liability and Business Automobile Liability coverages. The policy must include a waiver of subrogation in favor of DOC.
YES	Business Automobile Liability	\$1,000,000	\$2,000,000	The policy must include a waiver of subrogation in favor of DOC.
YES	Cyber Liability	\$2,000,000	\$2,000,000	Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. The



				policy must include a waiver of subrogation in favor of DOC
YES	Technology Professional Liability	\$2,000,000	\$2,000,000	The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the Contractor.
	Building and Personal Property			
	Crime Policy	\$3,000,000	\$3,000,000	This coverage to include Employee Dishonesty and (when applicable) Inside/Outside Money and Securities coverages for property or funds owned by the State of Washington or owed to the State of Washington in the care, custody, and control of Contractor, to include electronic theft and fraud protection.
	Pollution Liability	\$1,000,000	\$2,000,000	
	Longshore and Harbor Workers (Jones Act)			