Washington State
DEPARTMENT OF
ENTERPRISE SERVICES

PURCHASE ORDER ATTACHMENT A – STANDARD TERMS FOR PURCHASE

Purchaser means the entity identified as Purchaser in this Purchase Order.
Supplier means the supplier, vendor, or contractor identified as such in this Purchase Order.

1. **WASHINGTON STATEWIDE CONTRACTS & COOPERATIVE PURCHASING AGREEMENTS.** Pursuant to legislative direction, the Washington State Department of Enterprise Services ("Enterprise Services") develops competitive solicitations to obtain bids, evaluate, and award statewide contracts for goods and services, including competitively solicited cooperative purchasing agreements (collectively "Contract(s)"). Washington state agencies and other eligible purchasers (e.g., political subdivisions, institutions of higher education, etc.) who have executed a contract usage agreement with Enterprise Services may purchase goods and services from such Contracts. Typically, such purchases are made through a purchase order, field order, or similar agreement (collectively "Purchase Order(s)"). If the Purchase Order is based off a Contract, the terms and conditions of the Contract always control, but may be supplemented, by the Purchase Order; *Provided*, however, that, any Purchase Order terms or conditions that contradict the Contract shall be void.
2. **CONTROLLING DOCUMENTS; ORDER OF PRECEDENCE.**
   (a) CONTROLLING DOCUMENTS. For Purchase Orders, whether based off a Contract or otherwise, these Standard Terms for Purchase ("Terms") are incorporated into and made a part of the Purchase Order between ***Purchaser*** and ***Supplier*** as generated by ***Purchaser***. The Purchase Order consists of: (a) The Purchase Order as generated by ***Purchaser***; (b) all attachments to the Purchase Order as generated by ***Purchaser***, including but not limited to specifications, drawings, statements of work (SOW), and other documents incorporated by reference, but excluding ***Supplier's*** standard terms and conditions for sale; and (c) these Terms.
   (b) ORDER OF PRECEDENCE. Any conflicts between the documents shall be resolved in the following order of precedence: (i) the Contract or, if no Contract, the contract which the Purchase Order is based upon, if applicable; (ii) the wording of the Purchase Order; (iii) any attachments to the Purchase Order; and (iv) these Terms. Any other document provided by either party that contains terms and/or conditions that conflict with, or are inconsistent with the Purchase Order, including the language of ***Supplier's*** standard terms and conditions for sale, order acknowledgement, quote, proposal, invoice, click wrap or shrink wrap included with software of firmware, or anything on either party's website are objected to and expressly rejected by ***Purchaser*** and are void and of no effect with respect to this Purchase Order. Any conflicting or inconsistent documentation shall be considered a material alteration to the Purchase Order.
3. ***SUPPLIER* CERTIFICATIONS.** ***Supplier***, by accepting the terms of the Purchase Order, makes the certifications set forth herein both as of the effective date of the Purchase Order and at any time ***Supplier*** provides Goods or Services pursuant to this Purchase Order. If, at the time of performance, ***Supplier*** cannot make such certification or a prior certification is no longer is accurate, ***Supplier*** immediately shall notify ***Purchaser***, in writing, of such inability to make the certification(s) and shall not process any orders until directed to do so by ***Purchaser***.
   (a) QUALIFIED TO DO BUSINESS. ***Supplier*** certifies that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current and in full compliance with and has paid all applicable taxes owed to the State of Washington.
   (b) SUSPENSION & DEBARMENT. ***Supplier*** certifies that neither ***Supplier*** nor its principals or affiliates presently are or has 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.

(c) PUBLIC CONTRACTS AND PROCUREMENT FRAUD. ***Supplier*** certifies that, within the three (3) year period prior to this Purchase Order, neither ***Supplier*** or its principals or affiliates: (i) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or Purchase Order under a public contract; (ii) 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; (iii) 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 paragraph (ii) of this provision; or (iv) had one or more public contracts (federal, state or local) terminated for cause or default.

(d) LIENS. ***Supplier*** certifies that it (i) has, and shall convey to ***Purchaser*** upon delivery, good and marketable title to the Goods; and (ii) shall keep ***Purchaser's*** property free of liens. If ***Purchaser*** receives notice of a lien caused by ***Supplier***, ***Purchaser*** may withhold any payment otherwise due ***Supplier*** until ***Supplier*** submits proof, in a form satisfactory to ***Purchaser***, that all lienable claims have been fully paid or waived and any liens removed.

(e) FINANCIALLY SOLVENT. ***Supplier*** certifies that it has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods or Services that are the subject of this Purchase Order.

(f) OPERATIONAL CAPABILITY. ***Supplier*** certifies that Contractor has the operational and financial capability to perform this Purchase Order.

(g) ACCESS EQUITY – CONTRACT REPORTING (if utilizing subcontractors). Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor, if utilizing subcontractors to perform this Contract, shall register and report monthly, as Contractor, through *Access Equity*, Washington's secure online business diversity vendor management system (B2Gnow), which is managed by Washington's Office of Minority and Women's Business Enterprises (OMWBE), any payments to subcontractors pertaining to the Contract. Contractor further represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor shall use commercially reasonable efforts to ensure that such subcontractors also utilize *Access Equity* to verify such payment information as reported by Contractor.

(h) PROCUREMENT ETHICS & PROHIBITION ON GIFTS. ***Supplier*** certifies that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against ***Supplier*** providing gifts or anything of economic value, directly or indirectly, to ***Purchaser's*** employees.

(i) CIVIL RIGHTS. ***Supplier*** certifies that it 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.

(j) CONTINGENT FEES. ***Supplier*** certifies that no person or selling agent has been employed or retained to solicit or secure this Purchase Order 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.

(k) STATEWIDE PAYEE DESK. ***Supplier*** certifies that it is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.

(l) ADVERTISING AND ENDORSEMENT. ***Supplier*** certifies that it shall make no reference to ***Purchaser*** or the State of Washington in any promotional material without the prior written consent of ***Purchaser***. ***Supplier*** understands and acknowledges that ***Purchaser*** is not endorsing ***Supplier's*** Goods or Services or suggesting that such Goods or Services are the best or only solution to its needs.

4. **GOODS & SERVICES**. Subject to the terms and conditions of this Purchase Order, ***Supplier*** agrees to sell the goods and services as detailed in this Purchase Order to ***Purchaser***. "Goods" means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased or leased by ***Purchaser*** as identified in this Purchase Order. "Services" means all services of any nature ordered by ***Purchaser*** as identified in this Purchase Order. "Specifications" for Goods and Services are detailed in and/or attached and incorporated into the

Purchase Order. The quantity of Goods and Services subject to this Purchase Order is set out in this Purchase Order. Unless otherwise specified in this Purchase Order, all Goods and Services provided shall be new and unused of the latest model or design.

5. **PRICING**. Pricing for this Purchase Order is set forth in this Purchase Order. Pricing in this Purchase Order excludes all sales and use taxes.

6. **TAXATION**. ***Supplier*** shall comply with all federal, state, and local tax laws and regulations applicable to its performance of this Purchase Order. ***Supplier's*** invoices shall state separately (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction.

7. **PAYMENT**.
   (a) PAYMENT TERMS. ***Supplier*** shall submit periodic invoices to ***Purchaser*** for Goods and Services delivered under this Purchase Order. ***Purchaser's*** obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Goods and Services. Payment terms are net thirty (30) days after receipt of a timely and accurate invoice and conforming Goods and Services. ***Purchaser*** shall have no obligation to pay any amounts ***Supplier*** fails to invoice within 120 days of delivery of Goods or performance of Services. ***Purchaser*** retains the right of setoff for any amount due or owing to ***Purchaser*** or its affiliates in relation to this Purchase Order or any other contracts with ***Supplier***. ***Purchaser*** may make payments electronically (e.g., ACH payments). ***Supplier*** shall provide information necessary to facilitate electronic payments.
   (b) ADVANCE PAYMENT PROHIBITED. Except as authorized by law, ***Supplier*** shall not request or receive advance payment for any Goods and/or Services furnished by ***Supplier*** pursuant to this Purchase Order.
   (c) NO ADDITIONAL CHARGES. Unless otherwise specified in this Purchase Order, ***Supplier*** shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.

8. **DELIVERY OF GOODS & COMPLETION OF SERVICES**. ***Supplier*** shall deliver the Goods to the delivery point set out in this Purchase Order ("Delivery Point") and complete the Services on or before the date(s) set out in this Purchase Order. Failure to deliver Goods or complete Services by the date(s) stated in this Purchase Order is a breach of this Purchase Order. ***Supplier*** shall notify ***Purchaser*** within seventy-two (72) hours prior to the estimated delivery so that ***Purchaser*** may coordinate necessary resources to receive Goods. ***Supplier*** promptly shall notify ***Purchaser*** in writing of any anticipated or actual delay in delivery of Goods or completion of Services, the reasons for the delay, and the actions being taken by ***Supplier*** to overcome or minimize the delay.

9. **TITLE AND RISK OF LOSS; SHIPPING**. Title and risk of loss and responsibility for damage to the Goods or deliverables under any Services shall pass from ***Supplier*** to ***Purchaser*** upon delivery pursuant to the delivery terms specified in this Purchase Order. ***Supplier*** shall pack, mark, and ship Goods in accordance with ***Purchaser's*** instructions and in accordance with all applicable laws.

10. **INSPECTION**. ***Purchaser*** shall have 120 days from the date of delivery of Goods or completion of Services to inspect the Goods and Services, unless both parties agree in writing to extend the deadline for inspection. If Goods or Services do not conform to the Specifications, or are otherwise defective, ***Purchaser*** may, at its election either notify ***Supplier*** and offer ***Supplier*** a reasonable opportunity to remedy or return Goods to ***Supplier*** at ***Supplier's*** expense and receive either replacement Goods or a refund of the amounts paid for Goods or receive a refund for or re-performance of Services. If ***Purchaser*** returns Goods, it does not waive any other legal remedies that may be available. ***Purchaser's*** review of Specifications does not constitute approval and does not relieve ***Supplier*** of responsibility for compliance with all Specifications and with all applicable laws, codes, and regulations. ***Purchaser's*** inspection or failure to inspect, payment for, or acceptance of Goods and Services shall not impair ***Purchaser's*** right to reject nonconforming Goods or Services or to pursue any other legal remedies, including its warranty rights. Final acceptance of Goods or Services occurs when they have been shown to meet the Specifications.

11. **CHANGES**. ***Purchaser*** may request changes in Specifications, the quantity of Goods or the scope of Services, or delivery dates. In such event, ***Supplier*** shall provide ***Purchaser*** with a written proposal within five (5) business days of ***Purchaser's*** Purchase Order change request that includes any changes in costs, dates, or other terms. If

accepted by ***Purchaser***, the proposal, together with any changes in terms shall be memorialized in an amendment to this Purchase Order, signed by both parties.

12. **QUALITY; WARRANTY; REMEDY**.

(a) GOODS WARRANTY. ***Supplier*** warrants that, for a period of twelve (12) months from the date when the Goods are put into use, or eighteen (18) months after delivery of the Goods, whichever is earlier ("Goods Warranty Period"), the Goods: (i) are free from defects in design, material and workmanship; (ii) are appropriate for the specified application(s), if any; (iii) are consistent with recognized industry quality standards; and (iv) comply with the Specifications included in this Purchase Order (collectively, the "Goods Warranty").

(b) GOODS REMEDY. If Goods do not comply with the Goods Warranty or any defects develop during the Goods Warranty Period under normal use, ***Supplier*** promptly shall remedy the defect by removing, repairing, correcting, or replacing, and/or reinstalling any defective Goods or, at ***Purchaser's*** election, ***Supplier*** promptly shall refund the portion of the ***Purchaser's*** costs for such defective Goods. ***Supplier's*** Goods Warranty support shall include, at ***Supplier's*** sole expense, all technical support, parts, materials and equipment, and labor, including freight and "in/out" costs required to address the defect.

(c) SERVICES WARRANTY. ***Supplier*** warrants that: (i) the Services shall be performed in a timely, efficient, professional, and workmanlike manner consistent with the standard of care in the industry; (ii) all ***Supplier*** personnel assigned to perform Services shall have the necessary skill and training; and (iii) the Services shall comply with the Specifications stated in this Purchase Order ("Services Warranty"). The Services Warranty applies during performance of the Services and shall survive for a period of twelve (12) months after the date when the Services are completed (collectively, the "Services Warranty Period").

(d) SERVICES REMEDY. If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, ***Supplier*** promptly shall remedy the non-conformance, or at ***Purchaser's*** election, ***Supplier*** promptly shall re-perform or correct the nonconforming Services at no additional cost to ***Purchaser*** or refund the amounts paid for the Services.

(e) IT WARRANTY. ***Supplier*** warrants, that all hardware, software, and firmware associated with Goods or Services ("IT Goods" and "IT Services", respectively) shall not: (i) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to (a) damage, destroy, or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (ii) contain any third party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed, or otherwise made available without the consent of ***Purchaser***, or (b) may require distribution, copying, or modification of any software free of charge; and (iii) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party ("IT Warranty"). The IT Warranty shall expire twelve (12) months after the date IT Goods are delivered or twelve (12) months after the date IT Services are complete, as applicable.

(f) IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, ***Supplier***, at ***Purchaser's*** election, promptly shall: (i) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (ii) re-perform or correct the non-conforming IT Services at no additional cost to ***Purchaser***; or (iii) refund the amounts paid for IT Services and IT Goods. The remedy set out in this subsection (f) shall be in addition to the rights and obligations of the parties set out in Section 20(b) (Intellectual Property Indemnity) of these Terms and elsewhere in this Purchase Order.

(g) FAILURE TO REMEDY. If ***Supplier*** does not remedy a defect or nonconformity within seven (7) calendar days after receipt of written notice from ***Purchaser***, or if an emergency exists rendering it impossible or impractical for ***Purchaser*** to have ***Supplier*** provide a remedy, ***Purchaser*** may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or IT Services, in which case ***Supplier*** shall reimburse ***Purchaser*** for its actual costs or, at ***Purchaser's*** option, ***Purchaser*** shall offset the costs incurred from amounts owing to ***Supplier***.

13. **TECHNICAL SUPPORT**. During any applicable warranty period, ***Supplier*** shall provide all warranty service and telephone support, including after-hour technical support for Goods and Services used off-hours, at its own cost. ***Supplier*** shall maintain a technical support hotline to address breakdowns and safety incidents.

14. **SUBCONTRACTORS**.

    (a) NO SUBCONTRACTORS, UNLESS AUTHORIZED. ***Supplier*** shall not utilize subcontractors to provide Goods or perform Services under this Purchase Order without first obtaining ***Purchaser's*** written consent.

    (b) ***SUPPLIER*** RESPONSIBILITY. ***Supplier*** is solely responsible for fulfilling this Purchase Order, with responsibility for all Goods and Services as stated in this Purchase Order. ***Supplier*** is the sole point of contact regarding all contractual matters.

    (c) ***SUPPLIER*** SUBCONTRACTORS. If ***Supplier*** utilizes subcontractors, ***Supplier*** shall incorporate ***Supplier's*** responsibilities under this Purchase Order into its subcontracts. ***Supplier*** shall ensure that subcontractors comply with each and every ***Supplier*** obligation set forth in this Purchase Order. ***Supplier*** shall be responsible for the performance of any such subcontractors (regardless of tier) and shall defend, indemnify, and hold ***Purchaser*** harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier).

    (d) REPORTING. If ***Supplier*** is required to report to ***Purchaser*** and/or the State of Washington, such report(s) shall include subcontractor data, by subcontractor, for any data that ***Supplier*** is required to report as well as a consolidated 'rollup' report combining ***Supplier*** and subcontractor data.

    (e) ACCESS EQUITY CONTRACT REPORTING (if subcontractors are utilized). In the event that Contractor utilizes any subcontractor(s) to perform this Contract, Contractor shall require such subcontractor(s), to: (1) Register in *Access Equity*; (2) Complete the required *Access Equity* user training; (3) Use *Access Equity* to verify the amount and date of receipt of each payment from Contractor or, if applicable, a higher tier subcontractor; (4) Use *Access Equity* to report payments made by subcontractor to any lower tier subcontractor(s), if any, in the same manner as specified herein; (5) Promptly respond to any requests or instructions from Contractor or system-generated messages to check or provide information in *Access Equity*; and (6) When necessary, promptly coordinate with Contractor and/or Enterprise Services to resolve any discrepancies between reported and received payments.

    (f) SUBCONTRACTOR CERTIFICATIONS. Any ***Supplier*** certifications set forth in this Purchase Order shall apply to subcontractors (at any tier) and ***Supplier*** shall not utilize any subcontractors (at any tier) who cannot provide such certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless ***Purchaser*** shall pay such subcontractor directly.

15. **SAFETY**. Failure to comply with any of the requirements in this Section shall be cause for termination of this Purchase Order by ***Purchaser*** at ***Purchaser's*** sole discretion.

    (a) REGULATORY REQUIREMENTS/SAFETY. Goods and Services supplied by ***Supplier*** shall meet all OSHA and other safety-related federal, state, and/or local regulatory agency requirements applicable to the Goods and Services.

    (b) ON SITE REQUIREMENTS. As applicable, while on ***Purchaser's*** premises or while interacting with Purchasers personnel, ***Supplier***, its agents, employees, or subcontractors shall comply, in all respects, with ***Purchaser's*** physical, fire, access, safety, and other security requirements. ***Supplier*** represents and warrants that ***Supplier***, its agents, employees, or subcontractors who access ***Purchaser's*** premises shall be adequately trained by ***Supplier*** and at all times comply with ***Purchaser's*** requirements.

    (c) MATERIAL SAFETY DATA SHEETS. As applicable, ***Supplier*** shall provide ***Purchaser*** with all appropriate Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of Goods which requires such compliance and/or and for materials used by ***Supplier*** while performing Services and any updates of the same.

    (d) CLEAN-UP. If ***Supplier***, its agents, employees, or subcontractors perform onsite Services, ***Supplier***, at its cost, shall remove all excess materials, equipment, packaging, and garbage generated through performance of its work and leave that portion of the premises in which the work was performed in a clean condition. Should ***Supplier*** fail to clean up a Site after completion of work, ***Purchaser*** shall have the right to remove the materials and set off the cost of clean up against amounts owed to ***Supplier***.

(e) ACCIDENT AND INJURY REPORTING. If ***Supplier***, its agents, employees, or subcontractors are present at ***Purchaser's*** premises, ***Supplier*** promptly shall report in writing any injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving ***Supplier***, its agents, employees, or subcontractors occurring at such premises. ***Supplier*** agrees to cooperate and assist in any ***Purchaser*** investigation of incidents.

(f) HAZARDOUS MATERIALS. If ***Supplier*** uses chemicals or any potentially hazardous materials in the performance of Services or provision of Goods, ***Supplier*** assumes responsibility for any loss, release, or environmental incident arising out of ***Supplier's*** unloading, discharge, storage, handling, or disposal of any chemical or container holding potentially hazardous materials, including the use of potentially hazardous material alone or in combination with other substances, and for ***Supplier's*** noncompliance with any related laws or regulations.

(g) EQUIPMENT & PPE. ***Supplier*** is solely responsible for providing appropriate personal protective equipment ("PPE") and equipment for use by ***Supplier***, its agents, employees, or subcontractors in performing work under this Purchase Order. If, while performing work under this Purchase Order, ***Supplier*** uses vehicles, rigging, blocking, scaffolding, or other equipment ("Equipment") or PPE owned by ***Purchaser*** or a third party, then ***Supplier*** is responsible for determining the suitability and adequacy of the Equipment or PPE for ***Supplier's*** purposes, and before using such Equipment or PPE, ***Supplier*** shall determine, at its sole discretion and risk, the adequacy of the Equipment or PPE to perform the required task and educate itself and ***Supplier*** personnel regarding the appropriate and safe usage of the Equipment and PPE.

16. **OWNERSHIP AND USE OF INTELLECTUAL PROPERTY**.

(a) PRIOR INTELLECTUAL PROPERTY. Each party's intellectual property existing prior to the date of this Purchase Order shall remain the exclusive property of that party.

(b) MATERIALS. As used herein, "Materials" means all information in any format that includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, surveys, studies, computer programs, films, tapes, and sound reproductions.

(c) WORKS FOR HIRE. ***Supplier*** promptly shall disclose to ***Purchaser***, all developments, including designs, ideas, computer programs, discoveries, inventions, or improvements thereto, whether patentable, copyrightable, or not, made by ***Supplier*** in the performance of this Purchase Order. Unless otherwise provided, all Materials produced under this Purchase Order shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by ***Purchaser***. ***Purchaser*** shall be considered the author of such Materials. If the Materials are not considered "works for hire" under the U.S. Copyright laws, ***Supplier*** hereby irrevocably assigns all right, title, and interest in such Materials, including all intellectual property rights, to ***Purchaser*** effective from the moment of creation of such Materials.

(d) LICENSE FOR MATERIALS THAT INCORPORATE PRE-EXISTING INTELLECTUAL PROPERTY. For Materials that are delivered under this Purchase Order, but incorporate pre-existing Materials not created or produced under this Purchase Order, ***Supplier*** grants to ***Purchaser*** a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to make full use of the Goods, works for hire, and Materials that are the subject of this Purchase Order. ***Supplier*** warrants and represents that ***Supplier*** has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to ***Purchaser***.

(e)

17. DATA OWNERSHIP AND USE

(a) DATA OWNERSHIP AND USE. Purchaser's data ("Data") shall include Purchaser's data collected, used, processed, stored, or generate as the result of the use of the Services. Data is and shall remain the sole and exclusive property of Purchaser. Supplier is provided a limited, non-exclusive license to access and use Data solely for performing its obligations under this Purchase Order. Supplier shall: (a) keep and maintain Data in strict confidence and as further described in this Purchase Order and applicable law to avoid unauthorized access, use, disclosure, or loss; and, (b) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data for Supplier's own purposes or for the benefit of anyone other than Enterprise Services without Purchaser's prior written consent.

(b) DATA BACKUP. If the Supplier stores Purchaser's Data as part of the Services, Supplier is responsible for maintaining a backup of Data and for an orderly and timely recovery of such Data in the event that the Services may be interrupted. Supplier shall maintain a contemporaneous backup of Data that can be recovered within two (2) hours at any point in time.

(c) EXTRACTION OF DATA. If the Supplier stores Purchaser's Data, Supplier shall, within one (1) business day of Purchaser's request, provide Purchaser, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Supplier), an extract of the Data in the format specified by Purchaser.

(d) DISASTER RECOVERY. If the Supplier stores Purchaser's Data in the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Supplier shall notify Purchaser by the fastest means available and also in writing. Supplier shall provide such notification within twenty-four (24) hours after Supplier reasonably believes there has been such a disaster or catastrophic failure. In the notification, Supplier shall inform Purchaser of: (a) The scale and quantity of the Data loss; (b) What Supplier has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and (c) What corrective action Supplier has taken or will take to prevent future Data loss. Supplier shall restore continuity of Services to meet the 24 hours Recovery Point Objective (RPO) and 72 hours Recovery Time Objective (RTO). At the commencement of the Purchaser Order, Supplier shall provide a copy of its disaster recovery plan and obtain Purchaser's written approval of the disaster recovery plan. Supplier shall annually demonstrate the completion of disaster recovery testing and present a summary of test findings and any resulting remedial actions.

18. **CONFIDENTIAL INFORMATION; DATA SECURITY; NETWORK ACCESS.**

(a) CONFIDENTIAL INFORMATION. For purposes of this Purchase Order, "Confidential Information" includes information that is confidential under federal or state law, personal information as defined in RCW 42.56.590, as well as any information identified, in writing, by ***Purchaser*** as confidential or protected.

(b) PROTECTION OF CONFIDENTIAL INFORMATION. Notwithstanding any provision to the contrary, ***Supplier's*** use of Confidential Information shall comply with all applicable state and federal law. At a minimum, ***Supplier*** shall maintain records documenting: (i) the Confidential Information received pertaining to this Purchase Order; (ii) the purpose(s) for which the Confidential Information was received; (iii) who received and maintained the Confidential Information; and (iv) the final disposition of the Confidential Information. ***Purchaser*** reserves the right to monitor, audit, and/or investigate ***Supplier's*** use of Confidential Information used, collected, or acquired by ***Supplier*** pursuant to this Purchase Order and ***Supplier*** shall cooperate fully with ***Purchaser's*** monitoring, audit, and/or investigation.

(c) ***SUPPLIER*** OBLIGATION – CONFIDENTIAL INFORMATION. ***Supplier*** shall: (i) hold Confidential Information in strictest confidence and not make use of Confidential Information for any purpose other than the performance of this Purchase Order; (ii) release Confidential Information only to authorized employees or agents requiring such information for the purpose of performing this Purchase Order and who have executed an appropriate nondisclosure agreement or data sharing agreement as approved by ***Purchaser***; (iii) implement and maintain physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information including, but not limited to, storing Confidential Information on secure servers with access to the data strictly controlled and limited to staff with appropriate training and clearance; and (iv) ensure that all Confidential Information is encrypted in transmission from and to ***Supplier***, at rest in the data base or other data facility maintained or used by ***Supplier***, and when transmitted to authorized recipients.

(d) ***SUPPLIER*** OBLIGATION – DATA SECURITY. If this Purchase Order involves ***Purchaser's*** Data and/or access to ***Purchaser's*** IT network, ***Supplier***, at its expense, shall comply with all data security requirements set forth in *Attachment C – Data Security Requirements*.

(e) ***SUPPLIER*** OBLIGATION – EXPIRATION OR TERMINATION. Upon expiration or termination of this Purchase Order, ***Supplier***, at ***Purchaser's*** direction, timely shall: (i) Certify to ***Purchaser*** that all Confidential Information

has been destroyed; or (ii) return all Confidential Information to ***Purchaser***; or (iii) take whatever other actions ***Purchaser*** requires of ***Supplier*** to protect such Confidential Information.

(f) NETWORK ACCESS. During its performance of this Purchase Order, ***Supplier*** may be granted access to ***Purchaser's*** computer and telecommunication networks ("Networks"). As a condition of Network use, ***Supplier*** shall: (a) use the Networks in compliance with all applicable laws, rules, and regulations; (b) use software, protocols, and procedures as directed by ***Purchaser*** to access and use the Networks; (c) access only Network locations made available to ***Supplier*** by ***Purchaser***; (d) not interfere with or disrupt other users of the Networks; (e) assure that transmissions over the Networks by ***Supplier*** (i) do not contain any libelous, defamatory, profane, offensive, obscene, pornographic, or unlawful material, and (ii) are not used to perform any illegal activities, including but not limited to, encouraging, selling, or soliciting illegal drugs, gambling, pornography, prostitution, robbery, spreading computer worms or viruses, hacking into computer systems, or trafficking credit card codes; and (f) upon termination or expiration of this Purchase Order, relinquish all IP addresses or address blocks assigned to them on the Networks. Additionally, ***Supplier*** shall comply with ***Purchaser's*** IT policies.

19. **PUBLIC INFORMATION**.

(a) WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this Purchase Order and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.

(b) ***SUPPLIER*** OBLIGATION. ***Supplier***, when submitting records to ***Purchaser,*** shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to ***Purchaser*** that ***Supplier*** believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in ***Supplier's*** judgment, certain portions of ***Supplier's*** records are not statutorily exempt from disclosure but are sensitive because particular portions of ***Supplier's*** records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that ***Supplier*** protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, when submitting records to ***Purchaser, Supplier*** shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

(c) ***PURCHASER*** OBLIGATION. In the event that ***Purchaser*** receives a public records disclosure request pertaining to records that ***Supplier*** has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, ***Purchaser***, prior to disclosure, shall do the following: ***Purchaser's*** Public Records Officer shall review any records marked by ***Supplier*** as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, ***Purchaser*** shall redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where ***Purchaser*** determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, ***Purchaser*** shall notify ***Supplier***, at the address provided in this Purchase Order, of the public records disclosure request and identify the date that ***Purchaser*** intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless ***Supplier***, at ***Supplier's*** sole expense, timely obtains a court order enjoining ***Purchaser*** from such disclosure. In the event ***Supplier*** fails to timely file a motion for a court order enjoining such disclosure, ***Purchaser*** shall release the requested record(s) on the date specified. ***Supplier's*** failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given is a waiver by ***Supplier*** of any claim that such records are exempt or protected from public disclosure.

20. **ACCOUNTING RECORDS; AUDIT**.

(a) RECORDS. ***Supplier*** shall maintain accounting records and procedures consistent with GAAP sufficient to support invoices for six (6) years after the expiration or termination of this Purchase Order; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

(b) AUDIT. ***Purchaser*** and its authorized representatives may, from time to time, audit those records and accounting procedures upon reasonable notice to ***Supplier***, during normal business hours, and make copies for its use. ***Supplier*** shall cooperate in any audit conducted by or on behalf of ***Purchaser.*** This

right shall survive for a period of six (6) years following expiration or termination of this Purchase Order; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

(c) OVERCHARGES. Without limiting any other remedy available to ***Purchaser***, ***Supplier*** shall reimburse ***Purchaser*** for any overcharges inconsistent with the terms of this Purchase Order at a rate of 125% of any such overcharge; *Provided*, however, that, in the event ***Supplier*** timely discovers and corrects any such overcharge and does so prior to the initiation of any audit, ***Supplier*** shall be entitled to reimburse ***Purchaser*** for the actual amount of such overcharge.

21. **INDEMNITY**.

(a) GENERAL INDEMNITY. To the fullest extent permitted by law, ***Supplier*** shall defend, indemnify, and hold ***Purchaser*** and its employees and agents harmless from and against any and all claims, damages, fines, penalties, costs, liabilities, or losses, however denominated, (including amounts paid in settlement of claims, reasonable attorneys' fees, consultant fees, expert fees, and costs) (collectively "Claims") to the extent arising out of ***Supplier's***, its successors', agents', employees', or subcontractors' negligence, other tortious fault, or intentional misconduct. The parties agree that if there are any limitations of the ***Supplier's*** liability, including a limitation of liability clause for anyone for whom the ***Supplier*** is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property.

(b) INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, ***Supplier*** shall defend, indemnify, and hold ***Purchaser*** and its employees and agents harmless from and against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secrets, or similar intellectual property rights covering the Goods or Services provided, or the use of the Goods or Services under this Purchase Order. If ***Purchaser's*** use of Goods or Services provided by ***Supplier*** is enjoined based on an intellectual property infringement Claim, ***Supplier*** shall, at its own expense, either procure for ***Purchaser*** the right to continue using the Goods or Services or, after consulting with ***Purchaser*** and obtaining ***Purchaser's*** consent, replace or modify the Goods or Services with substantially similar and functionally equivalent non-infringing Goods or Services.

22. **INSURANCE REQUIREMENTS**.

(a) REQUIRED INSURANCE. ***Supplier***, at its expense, shall obtain and maintain the insurance coverages set forth in *Attachment B – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made to ***Supplier***.

(b) WORKERS COMPENSATION. ***Supplier*** shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If ***Supplier*** fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, ***Purchaser*** may terminate this Purchase Order. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from ***Supplier***. If ***Supplier*** performs Services on ***Purchaser's*** behalf in the State of Washington, and only to the extent of claims against ***Supplier*** by ***Purchaser*** under the Indemnity obligations in this Purchase Order, ***Supplier*** expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. ***Supplier***'s indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

23. **FORCE MAJEURE**. Except for the obligation to pay amounts when due under this Purchase Order, neither party shall be liable to the other for damages due to a failure to carry out its obligations under this Purchase Order when that failure is in whole or part caused by fire, hurricane, flood, earthquake, lightning, or other natural event or disaster; epidemic, freight embargo; governmental or administrative action or prohibition; riot; strike (other than at the affected party's operations or that of its suppliers); acts of public enemies or terrorists; sabotage; or other events beyond that party's reasonable control (a "force majeure event"). A party whose

performance is affected by a force majeure event immediately shall notify the other, describing the event and estimating its duration, and bears the burden of proving that the event qualifies as a force majeure event. The parties shall cooperate in good faith to mitigate the effects of the force majeure event; *Provided*, however, that, if ***Supplier*** is unable to perform in a timely fashion, ***Purchaser*** may purchase replacement Goods or obtain substitute Services from another vendor without penalty, and those replacement Goods and substitute Services shall count towards any volume requirements in this Purchase Order. Alternatively, ***Purchaser*** may elect to terminate this Purchase Order. Unless ***Supplier*** is excused from performing due to a force majeure event, if ***Purchaser*** elects to acquire replacement Goods and substitute Services from another supplier because ***Supplier*** is unable to timely perform on the agreed schedule, ***Supplier*** shall reimburse ***Purchaser*** for all commercially reasonable additional costs and expenses incurred to obtain the replacement Goods and substitute Services.

24. **TERMINATION; EXPIRATION**.

(a) TERMINATION. This Purchase Order may be terminated: (i) upon the mutual written agreement of the parties; (ii) by the non-breaching party where a breach is not cured within fifteen (15) calendar days after written notice of breach is delivered to the breaching party unless a different time for cure is otherwise stated in this Purchase Order; and (iii) as otherwise expressly provided for in this Purchase Order. This Purchase Order shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Purchase Order as provided in subsection (ii) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.

(b) TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. Upon twenty (20) calendar days prior written notice, ***Purchaser*** may suspend or terminate this Purchase Order, in whole or in part at the sole discretion of ***Purchaser***, if ***Purchaser*** reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Purchase Order; or (ii) that a change in available funds affects ***Purchaser's*** ability to pay under this Purchase Order. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, ***Purchaser*** shall reimburse ***Supplier*** for Goods properly ordered and/or Services properly performed until the effective date of said notice. This provision states the sole and exclusive obligation and liability of ***Purchaser*** in the event of termination for nonappropriation or reduction of funds or changes in law.

(c) TERMINATION FOR PUBLIC CONVENIENCE. Upon sixty (60) calendar days prior written notice, ***Purchaser*** may terminate this Purchase Order for public convenience. If a written notice is delivered under this provision, ***Purchaser*** shall reimburse ***Supplier*** for Goods properly ordered and/or Services properly performed until the effective date of said notice. The provision states the sole and exclusive obligation and liability of ***Purchaser*** in the event of termination for public convenience.

(d) EXPIRATION – OBLIGATIONS. Upon expiration of this Purchase Order, ***Purchaser*** shall accept and take delivery of all outstanding and not yet fulfilled orders and pay ***Supplier*** the price as set out in this Purchase Order.

(e) ***SUPPLIER*** OBLIGATIONS – EXPIRATION OR TERMINATION. Upon expiration or termination of this Purchase Order, ***Supplier*** shall: (i) continue to fulfill its warranty obligations with respect to any Goods or Services sold to ***Purchaser*** and all provisions of this Purchase Order that, by their nature, would continue beyond the expiration, termination, or cancellation of this Purchase Order shall so continue and survive; and (ii) promptly return to ***Purchaser*** all keys, badges, and other materials supplied by ***Purchaser*** for the performance of this Purchase Order.

25. **DEFAULT; REMEDIES; LIMITATION OF DAMAGES**.

(a) DEFAULT. Any of the following events shall constitute cause for ***Purchaser*** to declare ***Supplier*** in default of this Purchase Order: (i) ***Supplier's*** non-performance of its contractual requirements and obligations under this Purchase Order; or (ii) ***Supplier's*** material breach of any term or condition of this Purchase Order.

(b) REMEDIES***.*** Upon default of ***Supplier, Purchaser*** may issue a written notice of default providing a fifteen (15) calendar day period in which ***Supplier*** shall have an opportunity to cure. Time allowed for cure shall

not diminish or eliminate ***Supplier's*** liability for damages. If the default remains after ***Supplier*** has been provided the opportunity to cure, ***Purchaser*** may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Purchase Order; (iii) impose liquidated damages, if liquidated damages are listed in this Purchase Order; (iv) propose that ***Supplier*** be debarred from receiving future contracts from ***Purchaser*** or the State of Washington; or (v) demand a full refund of any payment that ***Purchaser*** has made to ***Supplier*** under this Purchase Order for Goods or Services that do not conform to this Purchase Order.

(c) LIMITATION OF DAMAGES. Neither party shall be liable to the other for incidental, consequential, or punitive damages, including loss of profits or loss of revenue; provided, however, that nothing contained in this Section shall in any way exclude or limit: (i) a party's liability for all damages arising out of that party's intentional acts or omissions; (ii) the operation of any Goods or Services warranty provided in this Purchase Order; (iii) any liability for liquidated damages that are set out in this Purchase Order; or (iv) damages subject to the Intellectual Property Indemnity section of this Purchase Order. Any limitation of either party's obligations under this Purchase Order, by delivery slips or other documentation is void.

26. **DISPUTE RESOLUTION**. The parties shall cooperate to resolve any dispute pertaining to this Purchase Order 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 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.

27. **SMALL & DIVERSE BUSINESSES**. ***Purchaser***, in accordance with Washington law, encourages small and diverse businesses to compete for and participate in state procurements as contractors and as subcontractors to awarded contractors. *See, e.g.*, RCW 39.19 (OMWBE certified businesses); RCW 43.60A.200 (WDVA Certified Veteran-Owned Businesses); and RCW 39.26.005 (Washington Small Businesses).

    (a) ***PURCHASER'S*** VOLUNTARY GOALS. In support of the state's economic goals and to support a diverse supplier pool, ***Purchaser*** has established the following voluntary numerical goals for ***Purchaser's*** contracts: (i) 10% Minority-Owned Businesses certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE); (ii) 6% Women-Owned Businesses certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE); (iii) 5% Veteran-Owned Businesses certified by the Washington State Department of Veterans Affairs (WDVA); and (iv) 25% Washington Small Businesses, 5% of which are microbusinesses or minibusinesses as defined in RCW 39.26.010. Achievement of these goals is encouraged whether directly or through subcontractors

    (b) OMWBE CERTIFICATION. ***Supplier*** may contact the Washington State Office of Minority and Women's Business Enterprises (OMWBE) regarding information on Minority-Owned and Women-Owned certified firms, state and federal certification programs, or to become certified. OMWBE can be reached by telephone, 866-208-1064, or through their website at OMWBE.

    (c) WDVA CERTIFICATION. ***Supplier*** may contact the Washington State Department of Veterans' Affairs (WDVA) for information regarding Certified Veteran-Owned Businesses or to become a Certified Veteran-Owned Business. The WDVA can be reached by telephone, (360) 725-2169, or through their website at WDVA.

    (d) WASHINGTON SMALL BUSINESSES. ***Supplier*** may contact Enterprise Services about small and diverse business inclusion and qualification as a Washington Small Business. Call WEBS Customer Service at 360-902-7400.

28. **EMERGENCY SUPPORT**. During the term of this Purchase Order, in the event of public emergency (declared by the Governor), ***Supplier*** shall prioritize providing Goods and Services to ***Purchaser***.

29. **POLYCHLORINATED BIPHENYLS (PCBS)**. Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, ***Purchaser*** and the State of Washington, through its procurements of Goods and Services, are trying to minimize the purchase of Goods with PCBs and to incentivize its ***Suppliers*** to sell Goods (including Goods-in-packaging) without PCBs.

30. **GOVERNING LAW; VENUE; ATTORNEYS' FEES**.

(a) GOVERNING LAW. The laws of the State of Washington, without reference to any choice of law principles that would provide for the application of the laws of another jurisdiction, shall govern the interpretation and enforcement of this Purchase Order.

(b) JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Purchase Order, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

(c) ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Purchase Order, each party shall bear its own attorneys' fees and costs.

31. **GENERAL.**

(a) TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Purchase Order.

(b) COMPLIANCE WITH LAW. ***Supplier*** and ***Purchaser*** shall perform this Purchase Order in compliance with all applicable law. ***Supplier*** shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Purchase Order.

(c) NONDISCRIMINATION.

(1) Nondiscrimination Requirement. During the term of this Purchase Order, ***Supplier***, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, ***Supplier***, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which ***Supplier***, or subcontractor, has a collective bargaining or other agreement.

(2) Obligation to Cooperate. ***Supplier***, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that ***Supplier***, including any subcontractor, has engaged in discrimination prohibited by this Purchase Order pursuant to RCW 49.60.530(3).

(3) Default. Notwithstanding any provision to the contrary, ***Purchaser*** may suspend ***Supplier***, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Purchase Order, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until ***Purchaser*** receives notification that ***Supplier***, including any subcontractor, is cooperating with the investigating state agency. In the event ***Supplier***, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), ***Purchaser*** may terminate this Purchase Order in whole or in part, and ***Supplier***, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. ***Supplier*** 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.

(4) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Purchase Order termination or suspension for engaging in discrimination, ***Supplier***, subcontractor, or both, shall be liable for damages as authorized by law including, but not limited to, any cost difference between this Purchase Order 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. ***Purchaser*** shall have the right to deduct from any monies due to ***Supplier*** or subcontractor, or that thereafter become due, an amount for damages ***Supplier*** or subcontractor will owe ***Purchaser*** for default under this provision.

(d) ENTIRE AGREEMENT. This Purchase Order contains the entire understanding of the parties regarding the subject matter of this Purchase Order and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties regarding the subject matter of this Purchase Order.

(e) AUTHORITY. Each party to this Purchase Order, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Purchase Order

and that its execution, delivery, and performance of this Purchase Order has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

(f) AMENDMENT OR MODIFICATION. Except as set forth herein, this Purchase Order may not be amended or modified except in writing and signed by a duly authorized representative of each party.

(g) NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Purchase Order. Neither party is an agent of the other party, nor is either party authorized to obligate the other party except as expressly set forth herein or in this Purchase Order.

(h) INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Purchase Order. ***Supplier*** and its employees or agents performing under this Purchase Order are not employees or agents of ***Purchaser***. ***Supplier*** shall not have authorization, express or implied, to bind ***Purchaser*** to any agreement, liability, or understanding, except as expressly set forth herein or in this Purchase Order. ***Supplier*** and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through ***Purchaser*** or the State of Washington and ***Purchaser*** and the State of Washington shall not pay for or otherwise provide such coverage for ***Supplier*** and its employees and agents.

(i) ASSIGNMENT. ***Supplier*** may not assign its rights under this Purchase Order without ***Purchaser's*** prior written consent, which may be granted or withheld in ***Purchaser's*** sole discretion, and ***Purchaser*** may consider any attempted assignment without such consent to be void; *Provided*, however, that, if ***Supplier*** (a) provides written notice to ***Purchaser*** within thirty (30) days of such event and (b) timely executes ***Purchaser's*** Assignment, Assumption, and Consent Agreement, ***Supplier*** may assign its rights under this Purchase Order in full to any parent, subsidiary, or affiliate of ***Supplier*** that controls or is controlled by or under common control with ***Supplier***, is merged or consolidated with ***Supplier***, or purchases a majority or controlling interest in the ownership or assets of ***Supplier***. Unless otherwise agreed, ***Supplier*** guarantees prompt performance of all obligations under this Purchase Order notwithstanding any prior assignment of its rights.

(j) BINDING EFFECT; SUCCESSORS & ASSIGNS. This Purchase Order shall be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and shall inure to their benefit.

(k) ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. ***Supplier*** irrevocably assigns to ***Purchaser***, on behalf of the State of Washington, any claim for relief or cause of action which ***Supplier*** now has or which may accrue to ***Supplier*** in the future by reason of any violation of state or federal antitrust laws in connection with any goods/services provided in Washington for the purpose of carrying out ***Supplier's*** obligations under this Purchase Order, including, at ***Purchaser's*** option, the right to control any such litigation on such claim for relief or cause of action.

(l) SEVERABILITY. If any provision of this Purchase Order is determined to be invalid, illegal, or unenforceable, all other provisions of this Purchase Order shall remain in full force and effect provided that the economic or legal substance of this Purchase Order is not affected in a material way. If necessary to cure any invalidity, illegality or unenforceability, the parties shall negotiate in good faith to modify this Purchase Order to reflect as closely as possible the parties' original intent.

(m) WAIVER. No waiver shall bind either party unless it is made in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Purchase Order does not constitute a waiver of any other provision of this Purchase Order or a waiver of a subsequent breach of the same Purchase Order provision. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Purchase Order.

(n) SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Purchase Order shall survive and remain in effect following the expiration or termination of this Purchase Order, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

(o) FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Purchase Order shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Purchase Order. Each party hereto and its counsel has reviewed and revised this Purchase Order and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Purchase Order. Each term and provision of this Purchase Order to be performed by either party shall be construed to be both a covenant and a condition.

(p) FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Purchase Order, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Purchase Order including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Purchase Order.

(q) EXHIBITS/ATTACHMENTS. All exhibits and attachments referred to herein are incorporated in this Purchase Order in their entirety.

(r) CAPTIONS & HEADINGS. The captions and headings in this Purchase Order are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Purchase Order nor the meaning of any provisions hereof.

(s) ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Purchase Order or any other ancillary agreement has the same legal effect as delivery of an original executed copy of this Purchase Order or such other ancillary agreement for all purposes.

(t) COUNTERPARTS. If signatures are required, this Purchase Order may be executed in any number of counterparts, each of which together are deemed an original and all of which together constitute one and the same instrument. Execution of this Purchase Order at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Purchase Order.

1. **INSURANCE OBLIGATION**. If this Purchase Order specifies insurance coverages and limits, those requirements shall control. Otherwise, ***Supplier*** shall possess and maintain in full force and effect, at ***Supplier's*** sole expense, the following insurance coverages:

TYPE OF INSURANCE	MINIMUM LIMITS
Commercial General Liability ("CGL") Insurance (and, if necessary, commercial umbrella liability insurance) using the most current ISO CGL occurrence form or equivalent, covering bodily injury and property damage liability, contractual liability, products and completed operations liability. This coverage shall include a cross-liability clause or separation of insured condition.	▪ 2,000,000 per occurrence; ▪ $2,000,000 products and completed operations aggregate; and ▪ $2,000,000 general aggregate
Commercial Auto Liability Insurance covering all owned, hired and non-owned vehicles	▪ $1,000,000 per person; ▪ $1,000,000 per accident for bodily injury; ▪ $1,000,000 property damage or combined single limit of $1,000,000
Workers' Compensation	Statutory benefits as required by law
Employer's Liability or Stop-Gap Liability coverage (and, if necessary, commercial umbrella liability insurance) where necessary	▪ $1,000,000 each accident for bodily injury by accident; ▪ $1,000,000 each employee for bodily injury by disease; and ▪ $1,000,000 bodily injury by disease policy limit
Other coverages	As set forth in this Purchase Order.

(a) MINIMUMS. The insurance coverage limits set forth above may be satisfied by any combination of primary, umbrella, or excess policy. The insurance coverage limits set forth herein are the minimum. ***Supplier's*** insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve ***Supplier*** from liability in excess of such limits. ***Supplier*** waives all rights against ***Purchaser*** and the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

(b) EXCESS/UMBRELLA. The insurance limits in this Purchase Order may be provided by any combination of primary and umbrella/excess insurance policies.

(c) EXTENDED REPORTING PERIOD. If any required insurance coverage is on a claims-made basis (rather than occurrence), ***Supplier*** shall maintain such coverage for a period of no less than three (3) years following expiration or termination of this Purchase Order.

(d) BREACH. Failure to obtain and maintain the required insurance or to provide the required insurance documents is a material breach of this Purchase Order. Insurance documentation shall be delivered to ***Purchaser*** at the address set forth in this Purchase Order.

(e) SATISFY INSURANCE REQUIREMENTS BEFORE COMMENCING WORK. ***Supplier*** shall deliver all required insurance documentation, as directed above, before commencing work under this Purchase Order, and then no later than each policy's expiration date.

2. **INSURANCE CARRIER RATING**. Insurance companies providing the required coverage shall have an A.M. Best Financial Strength Rating of no less than "A-" and Financial Size no less than VII.

3. **ADDITIONAL INSURED**. When specified as a required insurance coverage (see § 1 – Insurance Obligation, above) Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include ***Purchaser*** (and its agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE**. Insurance coverage required by this Purchase Order shall be evidenced to ***Purchaser*** on the most current Acord 25 Certificate of Liability Insurance form or equivalent with attached Additional Insured endorsement(s) before ***Supplier*** commences Services or delivers Goods. The certificate of insurance and/or accompanying cover letter shall identify the type of work being performed, the ***Purchaser*** location for the work, and ***Supplier's Purchaser*** contact.

5. **PRIMARY COVERAGE**. ***Supplier's*** insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, ***Purchaser*** and/or the State of Washington. All insurance or self-insurance of ***Purchaser*** and/or the State of Washington shall be excess of any insurance provided by ***Supplier*** or subcontractors.

6. **SUBCONTRACTORS**. ***Supplier*** shall ensure that its subcontractors, if any, have insurance coverage and endorsements consistent with those of ***Supplier*** set out above during all operations or work under this Purchase Order. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit ***Supplier's*** liability or responsibility.

7. **WAIVER OF SUBROGATION**. ***Supplier*** and its subcontractors shall cause their insurance companies to waive rights of subrogation against ***Purchaser***. ***Supplier*** acknowledges that this waiver was mutually negotiated.

8. **LAPSE OR CANCELLATION**. Upon lapse or cancellation of any insurance required by this Purchase Order, ***Supplier*** shall notify ***Purchaser*** immediately of such lapse or cancellation and shall reinstate immediately the lapsed or cancelled insurance or purchase replacement insurance that meets the requirements of this Purchase Order. ***Supplier*** shall deliver immediately to ***Purchaser*** a replacement Certificate and Additional Insured endorsement(s).

◊ ◊ END ◊ ◊

1. **SECURITY COMPLIANCE**. ***Supplier*** is responsible for establishing an information security program and maintaining physical, technical, administrative, and organizational safeguards, that comply with: (a) applicable industry standards and guidelines; (b) American Institute of Certified Public Accountants (AICPA) System and Organization Controls (SOC) 1; and (c) Washington Technology Solutions (WaTech) Security Policies.

2. **ANNUAL SECURITY CERTIFICATIONS**. ***Supplier*** shall, at the commencement of this Purchase Order and annually thereafter, provide ***Purchaser*** the following reports and certifications: (a) AICPA Statement of Standards for Attestation Engagement (SSAE) No. 18 SOC 1 Type II fiscal year cycle audit report; (b) SOC 2 Type I report in accordance with AICPA AT 101; and (c) attestation that ***Supplier's*** Services are in compliance with WaTech Security Policies. ***Purchaser*** may accept, at its sole discretion, alternative reports, audits or reporting formats which ***Purchaser*** determines to be equivalent or better to the reports and certifications described herein.

3. **DATA BREACH**. ***Supplier*** must have an incident response process that follows National Institute of Standards and Technology (NIST) standards and includes breach detection, breach notification and breach response. Upon discovery or reasonable belief of any access, destruction, loss, theft, use or disclosure of ***Purchaser's*** Data by an unauthorized party ("Data Breach"), ***Supplier*** shall notify ***Purchaser*** by the fastest means available and also in writing. ***Supplier*** shall provide such notification within 48 hours after ***Supplier*** reasonably believes there has been such a Data Breach. ***Supplier's*** notification shall identify:
   (a) The nature of the Data Breach;
   (b) The Data accessed, used or disclosed;
   (c) The person(s) who accessed, used, disclosed and/or received Data (if known);
   (d) What ***Supplier*** has done or shall do to quarantine and mitigate the Data Breach; and
   (e) What corrective action ***Supplier*** has taken or shall take to prevent future Data Breaches.

   Supplier shall quarantine the Data Breach, ensure secure access to Data, and restore Services as needed to comply with terms and conditions of this Purchase Order. ***Supplier*** shall conduct an investigation of the Data Breach and shall share the report of the investigation with ***Purchaser***.

   In the event of the Data Breach, ***Supplier*** agrees to comply with all applicable state and federal statutory provisions, including but not limited to RCW 19.255.010 and RCW 42.56.590. Where notifications are required to the public or regulators, ***Supplier*** shall coordinate and cooperate with ***Purchaser*** in the development of a communication plan, and promptly and at no cost, provide advance copies of any notifications for ***Purchaser's*** review before disseminating. If a Data Breach occurs and is found to be the result of ***Supplier's*** acts, omissions or negligence, ***Supplier*** shall assume complete responsibility for notification of affected parties and be liable for all associated costs incurred by ***Purchaser*** in responding to or recovering from the Data Breach.

4. **TECHNICAL EXAMINATION AND AUDIT**. Upon advance written request, ***Supplier*** agrees that ***Purchaser*** or its designated representative shall have reasonable access to Services purchased by ***Purchaser*** under this Purchase Order, its operational documentation, records and databases, including online inspections. The online inspection shall allow ***Purchaser***, its authorized agents, or a mutually acceptable third party hired by ***Purchaser***, to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
   (a) Operating system/network vulnerability scans;
   (b) Web application vulnerability scans;
   (c) Database application vulnerability scans; and
   (d) Any other scans to be performed by ***Purchaser*** or representatives on behalf of ***Purchaser***.

   Supplier shall allow ***Purchaser*** reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Purchase Order and ***Purchaser's*** Data, at no cost to ***Purchaser***. After any significant Data loss, specific to data stored within the Services platform, or as a result of any disaster or catastrophic failure, ***Supplier*** shall at its expense have an independent, industry-recognized third party perform

an information security audit. This does not apply to data loss resulting from interruptions in the Services stemming from ***Purchaser's*** computers, network hardware, internet connectivity, or other elements owned or controlled by ***Purchaser*** that are reasonably required to use Services. The audit results shall be shared with ***Purchaser*** within seven (7)days of ***Supplier's*** receipt of such results. Upon ***Supplier*** receiving the results of the audit, ***Supplier*** shall provide ***Purchaser*** with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Purchase Order.

◊ ◊ END ◊ ◊

1. **FINANCED PURCHASE OF GOODS**.

   (a) ***SUPPLIER*** ACKNOWLEDGEMENT. ***Supplier*** acknowledges that ***Purchaser*** may finance its acquisition and purchase of the Goods with proceeds of the sale of certificates of participation in financing contracts entered into by the State of Washington, pursuant to its authority (RCW 39.94) and the related financing documents prepared by the Office of State Treasurer thereunder ("Program Documents").

   (b) ***SUPPLIER*** CONSENT. ***Supplier*** consents and agrees that, notwithstanding any provision to the contrary that may be contained in this Purchase Order between ***Purchaser*** and ***Supplier*** for the acquisition and purchase of the Goods, **Purchaser** may grant a security interest in the Goods to the Washington Finance Officers Association ("Corporation"), which security interest shall be assigned by the Corporation to U.S. Bank of Washington, as trustee (the "Trustee"), pursuant to the applicable Program Documents, to secure the ***Purchaser's*** obligations under the Program Documents. Unless and until an Event of Default or an Event of Nonappropriation occurs with respect to the State's obligations under the Program Documents, the Trustee shall have no right to use the Products.

   (c) DEFAULT OR NONAPPROPRIATION. If an Event of Default or an Event of Nonappropriation occurs with respect to the ***Purchaser's*** obligations under the Program Documents, ***Supplier*** consents and agrees that the Trustee thereafter shall have the right use the Goods, or to cause the Goods to be used by or transferred to another user, for the same purposes and subject to the same obligations (including payment obligations), restrictions and limitations that apply to ***Purchaser's*** use of the Goods under this Purchase Order (as modified by this consent provision), for the benefit of owners of certificates of participation in the State's financing contract obligations under the Program Documents.