

STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE
PURCHASE ORDER
GENERAL TERMS AND CONDITIONS

This Order is Purchaser's offer to Vendor and is not an acceptance by Purchaser of any offer to sell by Vendor or of any terms and conditions contained in any such offer. This Order shall become a contract for the goods and/or services specified upon Vendor's delivery of any portion of the items or services specified herein or upon any other act indicating Vendor's assent thereto. Any additional or different terms proposed by Vendor are objected to and rejected unless expressly assented to in writing by Purchaser on the purchase order. This Order is the complete and exclusive statement of the terms and conditions of the agreement between Purchaser and Vendor.

1. DEFINITIONS.

"Force Majeure" means an occurrence beyond the control of the party affected that could not have been avoided by exercising reasonable diligence. Force Majeure includes acts of war, riots, strikes, fire, floods, windstorms, epidemics or other similar occurrences.

"Order" means the terms and conditions on the face of Purchaser's purchase order and the terms and conditions set forth herein.

"Purchaser" means the State of Washington Office of the Secretary of State.

"Vendor" means the provider of goods and/or services under this Order.

- 2. REPRESENTATIONS AND WARRANTIES.** Vendor represents, warrants and covenants that the goods delivered under this Order: (i) will conform to the requirements of this Order (including all applicable descriptions, specifications, and drawings); (ii) will be merchantable, of good material and workmanship and free from defects, whether latent or apparent, and if ordered for a specific purpose, will be fit for their intended purpose; and (iii) will comply with all applicable laws, rules, regulations, codes, and ordinances.

Vendor represents, warrants and covenants that: (i) all services performed hereunder will be performed in a professional and workmanlike manner by qualified, trained personnel, free from errors, and in compliance with all applicable laws, rules, regulations, codes, and ordinances, and all of Purchaser's safety, security and other requirements communicated to Vendor; and (ii) no liens or claims will be filed, maintained or enforced by Vendor or its suppliers or subcontractors for any service performed or materials or supplies provided.

Vendor represents, warrants and covenants that Vendor will: (i) deliver the goods and perform the services that are the subject of this Order by the delivery and performance dates set forth on the face of the purchase order; (ii) at its own cost, provide all labor, materials, machinery, equipment, tools, transportation, and other facilities and services needed for the proper execution and completion of this Order, unless otherwise provided on the face of the purchase order; (iii) at its own cost, initiate, maintain and supervise all environmental and safety precautions and programs in connection with the services and, if Vendor is performing services on Purchaser's premises, comply with all of Purchaser's environmental,

health and safety rules, including all safety and security precautions and programs in connection with the performance of this Order, over persons and property within that portion of Purchaser's premises where the services are being performed (the "Service Location"); (iv) at its own cost, obtain and maintain all necessary permits, licenses or other approvals and give all notices legally required to provide the services; (v) be solely responsible for all methods and procedures of delivering and coordinating all portions of the services, unless otherwise provided on the face of the purchase order; (vi) be solely responsible for the handling, transportation and disposal of and maintain title and ownership to all materials, substances and chemicals not incorporated into the final goods or finished services that Vendor or any subcontractor brings onto Purchaser's premises and any waste generated or resulting from the use thereof. Vendor agrees not to dispose or permit the release of any materials, substances or chemicals (or any waste generated or resulting from the use thereof) on Purchaser's premises. Additionally, Vendor agrees to keep the Service Location and other parts of Purchaser's premises free from accumulations of materials and refuse and, upon completion of the services promptly remove same and all of Vendor's machinery, tools, and equipment and any unused materials, substances or chemicals and return Purchaser's premises to their original state.

These warranties are in addition to those implied by or available at law to Purchaser and shall exist notwithstanding the acceptance and/or inspection by Purchaser of all or part of the goods or services.

3. **INSPECTION.** All goods and services are subject to final inspection and acceptance by Purchaser. Purchaser will have a reasonable period of time after delivery or performance within which to inspect and accept the goods or services. The receipt of, the inspection or non-inspection of, or payment for the goods or services will not constitute acceptance of the goods or services and will not impair Purchaser's right to (i) reject non-conforming goods or services; (ii) recover damages and/or (iii) exercise any other remedies to which Purchaser may be entitled under this Order or at law or in equity. Further, acceptance of goods or services will not waive any rights or remedies at law or in equity accruing to Purchaser as a result of any breach of this Order. Purchaser will notify Vendor if any goods delivered hereunder are rejected, and at Purchaser's election and Vendor's risk and expense, such goods will be held by Purchaser or returned to Vendor. No replacement or correction of non-conforming goods or services shall be made by Vendor unless agreed to in writing by Purchaser. All defects, indirect and consequential costs of correcting, removing or replacing any defective goods or services will be at Vendor's cost and expense.
4. **PRICE AND TAXES.** Price and delivery terms are as stated on the face of the purchase order. Unless otherwise provided on the face of the purchase order, the price includes (i) all costs to comply with the terms and conditions of this Order; (ii) any and all taxes, including sales, use, excise, value added and other taxes, and (iii) fees, duties, or other impositions on the sale of the goods or services covered by this Order. The price set forth on the face of the purchase order shall not be increased for any reason without Purchaser's prior written consent by issuance of a change order.
5. **INVOICING AND PAYMENT.** No advance payment shall be made for goods or services furnished by Vendor under this Order. Vendor will invoice Purchaser for the amounts due under this Order. Vendor must provide Purchaser with a properly completed invoice, indicate the Order number on the invoice, and deliver it to the address indicated on the face of the purchase order within 60 days after delivery and acceptance of the goods or services. Vendor agrees that if it does not bring the amounts due to Purchaser's attention in writing within such time frame, it waives any rights to such claims, regardless of the validity of the claims. Payments may be withheld by Purchaser on account of (i) defective goods or services not remedied; (ii) claims made or filed; (iii) unsatisfactory performance; or (iv) failure of Vendor to pay any subcontractor. Payment made in accordance with the terms of the Order shall fully compensate Vendor for all risk, loss, damages or expense of whatever nature and the act of depositing or cashing any payment made by

Purchaser shall constitute Vendor's release of any and all claims arising prior thereto which Vendor may have against Purchaser or Purchaser's inventory, equipment, or property for the goods or services for which payment was made.

6. **PROPRIETARY AND CONFIDENTIAL INFORMATION.** Vendor warrants that all goods and/or services supplied under this Order shall not infringe on any third party's patent, copyright, trade secret, trade name, trademark or service mark, or other proprietary right. If a suit is brought or threatened for infringement of any such proprietary right, Vendor will, at its own expense, defend such suit and will indemnify and save and hold Purchaser harmless from and against all claims, damages, losses, demands, costs and expenses (including attorneys' fees) in connection with such suit or threatened suit.

To the extent consistent with the Public Disclosure Act, RCW Chapter 42.56, Purchaser will maintain the confidentiality of Vendor's information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, Purchaser will notify Vendor of the request and of the date that the records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified. Purchaser's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Vendor of any request(s) for disclosure for so long as Purchaser retains Vendor's information in Purchaser's records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Vendor of any claim that such materials are exempt from disclosure.

7. **RISK OF LOSS.** Title to, and risk of loss of, the goods shall remain with Vendor until the goods are delivered to and accepted by Purchaser. After delivery and upon acceptance, title to the goods shall pass to Purchaser and the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Vendor's fault or negligence.
8. **INDEMNIFICATION.** Vendor, at its expense, shall indemnify Purchaser, its officials, employees and agents, and save them harmless from any and all liabilities, damages and expenses (including attorneys' fees), demands, causes of action or claims, whether well founded or otherwise, including the cost of defending the same, for bodily injury to any person or damage to property, either real or personal, of any person whomsoever in any way arising out of, in the course of, or in connection with the goods or services purchased hereunder or the operations of Vendor in carrying out the terms of this Order. This indemnity shall survive delivery and acceptance of goods or services.
9. **PERSONAL LIABILITY.** In no event shall any official, officer, employee or agent of the state of Washington when executing their official duties in good faith be in any way personally liable or responsible for any agreement contained herein, whether express or implied, nor for any statement or representation made herein or in connection with this Order.
10. **INSURANCE.** Vendor shall, at its own expense, obtain and keep in force the following insurances until completion of this Order:

Employer's Liability (Stop Gap) Insurance: Vendor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employer's Liability Insurance with a limit of not less than \$1 million. The state of Washington will not be held responsible in any way for claims filed by Vendor or its employees for services performed under the terms of this Order.

Commercial General Liability Insurance: Vendor will at all times carry and maintain commercial general liability insurance and, if necessary, commercial umbrella insurance, for bodily injury and property damage arising out of services provided under this Order. This insurance shall cover such claims as may be caused by any act, omission, or negligence of Vendor or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of Vendor's premises/operations, independent contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions. The limits of liability shall be not less than as follows:

<i>General aggregate limits (other than products-completed operations)</i>	\$2 million
<i>Products-completed operations aggregate</i>	\$2 million
<i>Personal and advertising injury aggregate</i>	\$1 million
<i>Each occurrence (applies to all of the above)</i>	\$1 million
<i>Fire damage limit (per occurrence)</i>	\$50,000
<i>Medical expense limit (any one person)</i>	\$5,000

Business Automobile Liability Insurance: In the event that services delivered pursuant to this Order involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including disease, illness, and death, and property damage caused by an occurrence arising out of or in consequence of the performance of this service by Vendor, a subcontractor of Vendor, or anyone employed by either. Vendor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a combined single limit of not less than \$1 million per occurrence. The policy shall include hired and non-owned coverage.

Vendor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractors must comply fully with all insurance requirements stated herein. Failure of any subcontractor of Vendor to comply with insurance requirements does not limit Vendor's liability or responsibility.

The state of Washington shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. The insurance shall be issued by an insurance company authorized to do business in the state of Washington, and placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Each policy shall provide for 30 days' prior written notice to Purchaser of cancellation of or material change to the policy.

All insurance provided in compliance with this Order shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state. Vendor waives all rights against the state of Washington for the recovery of damages to the extent they are covered by the insurances required herein. The state reserves the right to increase or decrease limits as appropriate.

Upon request, Vendor shall furnish evidence in the form of a certificate of insurance satisfactory to the state of Washington that insurance, of the foregoing kinds and minimum amounts, has been secured. Failure to provide proof of insurance as required may result in cancellation of this Order.

11. **DISPUTES.** Problems arising out of the performance of this Order shall be resolved in a timely manner at the lowest possible level of authority. If a problem persists and cannot be resolved, it may be escalated within each organization. In the event that a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three business days. The initiating party shall have three business days to review the response. If after this review a resolution cannot be reached, both parties shall have three business days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after three business days, a dispute resolution panel may be requested in writing by either party, who shall also identify the first panel member. Within three business days of receiving the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the panel within the next three business days. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Purchaser and Vendor agree: (i) to exercise good faith in dispute resolution and to settle disputes whenever possible prior to using a dispute resolution panel; (ii) to continue without delay to carry out all their respective responsibilities under this Order that are not affected by the dispute; and (iii) to be bound by the determination of the dispute resolution panel.

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including the cost of a mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

12. **ADMINISTRATIVE SUSPENSION.** When it is in the best interest of the state, Purchaser may at any time, and without cause, suspend this Order or any portion thereof for a period of not more than 30 days per event by written notice from Purchaser to Vendor. Vendor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, Vendor can be demanded and required to resume performance within the 30-day suspension period by Purchaser providing Vendor with written notice of such demand.
13. **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Order if, and to the extent that, such party's performance of this Order is prevented by reason of Force Majeure. If either party is delayed by Force Majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the Force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by change order for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Order. Purchaser reserves the right to authorize a change order, terminate this Order, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of Force Majeure, and Vendor shall have no recourse against the state.

14. **CANCELLATION/TERMINATION.** Time is of the essence under this Order. Purchaser reserves the right to cancel this Order, or any portion of this Order, without liability, if: (i) Vendor fails to perform services or deliver goods when and as specified herein, or fails to perform or comply with any other provision of this Order; (ii) Vendor ceases to conduct its operation in the normal course of business; (iii) Vendor is unable to meet its obligations as they mature; (iv) proceedings are instituted against Vendor under the bankruptcy laws or any other laws relating to the relief of creditors; (v) a receiver is appointed or applied for by Vendor; or (vi) any assignment is made by Vendor for the benefit of creditors.

In the event of Vendor's failure to perform its obligations hereunder, Purchaser may issue a written cure notice, and Vendor may have a period of time in which to cure. Purchaser is not required to allow Vendor to cure if cure is not feasible as determined by Purchaser in its sole discretion. Time allowed for cure shall not diminish or eliminate Vendor's liability, or otherwise affect any other remedies available against Vendor under this Order, at law or in equity. If the breach remains after Vendor has been provided the opportunity to cure, Purchaser may exercise all rights and remedies as may be available to Purchaser.

In the event of Vendor's failure to perform its obligations hereunder, Purchaser may, at its option, recover from Vendor any losses including reasonable attorneys' fees, and any other actual, incidental, indirect, special or consequential damages, and may exercise all rights and remedies as may be available to Purchaser. The remedies provided for in this Order shall not be exclusive but are in addition to all other remedies available at law or in equity.

15. **TERMINATION FOR CONVENIENCE.** Purchaser may cancel this Order in whole or in part by giving Vendor 30 days' written notice. If this Order is so cancelled, Purchaser shall be liable only for payment required under this Order for properly authorized services rendered, or goods delivered to and accepted by Purchaser prior to the effective date of cancellation. Purchaser shall not have any other obligation whatsoever to Vendor for such cancellation. This termination for convenience clause may be invoked by Purchaser when it is in the best interest of the state of Washington.
16. **TERMINATION FOR WITHDRAWAL OF AUTHORITY OR NON-ALLOCATION OF FUNDS.** In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way prior to normal completion of the terms of this Order, or if funds are not allocated to Purchaser to continue this Order in any future period, Purchaser may cancel this Order by giving Vendor seven days' written notice.
17. **WAIVER.** Failure or delay of Purchaser to insist upon the strict performance of any term or condition of this Order or to exercise any right or remedy with respect to this Order, or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release Vendor from any responsibilities or obligations imposed by this Order or by law, and shall not be deemed a waiver of any right of Purchaser to insist upon the strict performance of this Order by Vendor. In the event of any claim for breach of contract against Vendor, no provision of this Order shall be construed, expressly or by implication, as a waiver by Purchaser of any existing or future right and/or remedy available by law.
18. **INDEPENDENT CONTRACTOR.** In the performance of this Order, Purchaser and Vendor will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Order. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under RCW Chapter 41.06 or RCW Title 51.

19. **SUBCONTRACTING AND ASSIGNMENT.** Vendor may not assign or subcontract its rights and obligations under this Order without the prior written consent of Purchaser, and any attempt to do so without such consent will be null and void. Vendor shall incorporate these terms and conditions on any order or subcontract approved by Purchaser and procured from third parties pertaining to this Order. Vendor shall remain fully responsible for all work performed by such third parties and shall indemnify and hold Purchaser harmless for any payment required to be made to any such parties.
20. **ADVERTISING AND COMMUNICATIONS.** Vendor shall not publish or use any information concerning this Order in any format or media for advertising or publicity without the prior written consent of Purchaser. Purchaser is not endorsing Vendor's products or services, or suggesting that they are the best or only solution to their needs. Vendor agrees to make no reference to Purchaser in any literature, promotional materials, brochures, sales presentations or the like, regardless of the method of distribution, without the prior review and written consent of Purchaser.
21. **GENERAL PROVISIONS.** Section headings are for convenience only and shall have no legal or interpretive effect. If any provision of this Order shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Order that can be given effect without the invalid provision, all of which will remain in full force and effect. Any notice or demand or other communication required or permitted hereunder shall be given in writing and delivered to the parties at their addresses set out in the purchase order, either in person, by a nationally recognized courier service, or by depositing it with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested. Notices shall be deemed effective upon receipt. This Order shall be governed by and construed in accordance with the laws of the state of Washington, without regard to conflict of law principles, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County, Washington.