

Date	PO Number

# WAHBE Purchase Order

## STANDARD TERMS AND CONDITIONS

The Contractor shall provide the goods and services described in this Purchase Order subject to the following Standard Terms and Conditions, unless otherwise noted on the face of the Purchase Order. All additional or different terms proposed by the Contractor are objected to and hereby rejected unless otherwise provided in a writing signed by a duly authorized representative of the Agency.

### 1. DEFINITIONS:

- a. "Agency" means the Washington Health Benefit Exchange.
- b. "Purchase Order" means an Agency order for goods, services, or both goods and services (the "Deliverables") that becomes a binding contract upon written acceptance or performance by the Contractor, and that consists of the face of the Purchase Order and these Standard Terms and Conditions, and any other specifically referenced documents.
- c. "Contractor" means the individual, partnership, company, or corporation contractually obligated to provide the Deliverables described in this Purchase Order.

2. **WARRANTIES:** Contractor warrants that all Deliverables provided under this Purchase Order shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein.

3. **EXPENSES:** Contractor may receive reimbursement for travel and other expenses with written authorization in advance by the Exchange. Such expenses may include airfare (economy or coach class only), ground transportation expenses, lodging and meals necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current Washington Health Benefit Exchange travel reimbursement rates/GSA rates. To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when the expenses were incurred.

### 4. DELIVERY, INSPECTION, REJECTION, CURE:

- a. **TIME OF THE ESSENCE:** Time is of the essence in the performance of this Purchase Order.
- b. **SHIPPING & RISK OF LOSS:** All goods subject to this Purchase Order shall be shipped F.O.B. destination, freight prepaid and allowed. Risk of loss of the goods shall pass to the Agency at the time the goods are accepted by the Agency.
- c. **INSPECTION:** The Agency's inspection of all goods upon delivery is for the sole purpose of identification. Such inspection shall not be construed as acceptance of the goods.
- d. **REJECTION:** The Agency may reject any nonconforming Deliverables by seasonably notifying the Contractor in writing.
- e. **OPPORTUNITY TO CURE:** Contractor shall have the right to cure the materiality of any breach prior to the time for performance under this Purchase Order. This right to cure terminates upon the time of performance.

### 5. INVOICING & PAYMENT:

- a. **ADVANCE PAYMENT PROHIBITED:** No payments in advance or in anticipation of goods or services to be provided under this Purchase Order shall be made by Agency.
- b. **INVOICING:** Contractor shall provide original invoices. Each invoice shall reference the Purchase Order number. Invoices shall be properly annotated with applicable prompt payment discount(s).
- c. **IDENTIFICATION:** All invoices, packing lists, packages, instruction manuals, correspondence, shipping notes, shipping containers, and other written documents relating to this Purchase Order shall be identified by the Purchase Order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.
- d. **PAYMENT:** Payment shall be made net 30 days of receipt of invoice.

### 6. DEFAULT, REMEDIES, WAIVER:

- a. **DEFAULT:** Contractor shall be in default if it is in material breach of any term or condition of this Purchase Order. The time of default shall begin when the material breach occurs or after any applicable opportunity to cure period lapses, whichever is later.
- b. **REMEDIES:**
  - 1) With respect to any nonconforming Deliverables, the Agency may elect to do one or more of the following:

- a) Specific performance: If the Deliverables are unique, sole sourced, or otherwise deemed by the Agency to be unavailable elsewhere, the Agency may demand specific performance.
  - b) Cover: The Agency may obtain substitute Deliverables and charge the Contractor the difference between the cost of the substitute Deliverables and the contracted for price in this Purchase Order.
  - c) Price reduction: The Agency may retain nonconforming Deliverables and equitably reduce the price of the Purchase Order based on the difference between the contracted for price and the fair market value of the nonconforming Deliverables.
  - d) Return: The Agency may return or set aside for pickup by the Contractor any nonconforming goods and terminate this Purchase Order for cause.
- 2) The Contractor shall be liable for all incidental and consequential damages caused by any breach of this Purchase Order. Such damages may be recovered, in whole or in part, by equitable price reduction or credit against any amounts that may be owed to the Contractor under this Purchase Order.
  - 3) **THE AGENCY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THIS PURCHASE ORDER. FURTHERMORE, IN THE EVENT OF A TERMINATION OF THIS PURCHASE ORDER, THE AGENCY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER SHALL NOT EXCEED THE PURCHASE PRICE OF SERVICES RENDERED OR GOODS DELIVERED PRIOR TO THE EFFECTIVE DATE OF THE TERMINATION.**
  - 4) The rights and remedies provided by this Purchase Order are cumulative and (except as otherwise provided in this Purchase Order) are not exclusive of any other or additional rights or remedies provided by law.
- c. **WAIVER:** Waiver of any breach or default shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms of this Purchase Order unless stated to be such in writing by a duly authorized representative of the Agency.
7. **TERMINATION:** Except as provided below, this Purchase Order shall terminate upon successful performance of all obligations by both parties.
    - a. **TERMINATION DUE TO CHANGE IN FUNDING:** In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Purchase Order and prior to normal completion, the Agency may terminate the Purchase Order without advance notice, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.
    - b. **TERMINATION FOR CAUSE:** In the event the Agency determines the Contractor is in default, the Agency shall have the right to suspend or terminate this Purchase Order. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of its control, fault, or negligence.
    - c. **TERMINATION FOR CONVENIENCE:** Except as otherwise provided in this Purchase Order, the Agency may, by ten (10) days written notice, beginning on the second day after mailing, terminate this Purchase Order, in whole or in part.
  8. **DISPUTE RESOLUTION:** Except as otherwise provided in this Purchase Order, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Purchase Order shall be construed to limit the parties' choice of a mutually acceptable alternative dispute resolution method such as a dispute hearing, a dispute resolution board, or arbitration.
  9. **ATTORNEY FEES & COSTS:** In the event of litigation or other action is brought that arises out of or is related to this Purchase Order, each party shall bear its own attorney fees and costs.
  10. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Agency, and all officials, agents, and employees of Agency, from and against all claims for injuries or death arising out of or resulting from the performance of the Purchase Order. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the Agency for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Purchase Order. Contractor's obligation to indemnify, defend, and hold harmless the Agency shall not be eliminated or reduced by any actual or alleged concurrent negligence of the Agency or any of its agents, employees, and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the Agency and its officials, agents, or employees.

11. **ANTITRUST:** The Contractor hereby assigns to Agency any and all of its claims for price fixing or overcharges which arise under federal or state law relating to the goods, products, or services purchased under this Purchase Order.
12. **INSURANCE:** The Contractor shall procure and maintain Workers' Compensation insurance in the amount required by law, General Liability insurance at a minimum of \$1,000,000 per occurrence and \$2,000,000 general aggregate, and Automobile Liability Insurance at or above the amount required by law, at its own expense, for all work related to the performance of this Purchase Order.
13. **INTEGRATION & RULES OF PRECEDENCE:**
  - a. **INTEGRATION:** This Purchase Order contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Purchase Order shall be deemed to exist or to bind any of the parties hereto.
  - b. **RULES OF PRECEDENCE:** In the event of an inconsistency in this Purchase Order, the inconsistency shall be resolved by giving precedence in the following order:
    - 1) The face of the Purchase Order;
    - 2) The State Master Contract (if applicable);
    - 3) These Standard Terms and Conditions;
    - 4) Any referenced Contractor quote or other document.
14. **MODIFICATIONS:** This Purchase Order may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
15. **ASSIGNMENT & SUBCONTRACTING:**
  - a. **ASSIGNMENT:** Neither this Purchase Order, nor any claim arising under this Purchase Order, shall be transferred or assigned by the Contractor without prior written consent of the Agency.
  - b. **SUBCONTRACTING:** Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Purchase Order without obtaining prior written approval of the Agency.
16. **COMPLIANCE WITH APPLICABLE LAW:** At all times during the term of this Purchase Order, the Contractor shall comply with all applicable laws.
17. **PUBLICITY:** The Contractor shall not name the Agency as a customer, nor use any information related to this Purchase Order, in any format or media, in any of Contractor's advertising or publicity without prior written consent from the Agency.
18. **INDEPENDENT CONTRACTOR:** The parties intend that an independent contractor relationship will be created by this Purchase Order. The Contractor and its employees and agents performing under this Purchase Order are not employees or agents of the Agency. Conduct and control of the work to be performed under this Purchase Order shall be solely within the purview of the Contractor.
19. **CHOICE OF LAW & VENUE:** This Purchase Order shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action that arises out of or is related to this Purchase Order shall be in the Superior Court for Thurston County.
20. **SEVERABILITY:** In the event any provision of this Purchase Order is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding.
21. **PAYMENTS, CASH DISCOUNT, LATE PAYMENT CHARGES:** Invoices will not be processed for payment nor will the period for computing applicable cash discounts commence until receipt of a properly completed invoice or receipt of products or services, whichever is later. If an adjustment is necessary due to damage or rejection of products or services, the cash discount period shall commence on the date final approval for payment is authorized by Agency. Pursuant to RCW 39.76, if Purchaser fails to make timely payment, Vendor may invoice for one percent per month on the amount overdue, or a minimum of one dollar. Provided that, the Purchaser will not pay late fees on purchases where federal or state laws or policies prohibit use of those funds for the payment of late fees.
22. **TAXES:** Agency will pay sales or use taxes imposed on the products or services. Vendor will pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, and personal property taxes levied or assessed on Vendor's personal property.
23. **LIENS, CLAIMS AND ENCUMBRANCES:** Vendor warrants and represents that all products supplied hereunder are free and clear of all liens, claims, or encumbrances of any kind.
24. **SITE SECURITY:** Vendor, its agents, employees, or subcontractors shall conform in all respects with reasonable physical, fire, or other published security regulations while on Agency's premises.
25. **INFRINGEMENTS:** Vendor will, at its expense, defend or settle any claim against Purchaser that any products or services supplied hereunder infringe any patent, copyright, or trademark. Vendor will pay resulting costs, damages and attorneys' fees.

- 26. COMPLIANCE WITH CIVIL RIGHTS LAWS:** Vendor hereby assures its compliance with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and chapter 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance, this Purchase Order may be rescinded or terminated in whole or in part, and Vendor may be declared ineligible for further contracts with Purchaser and Vendor may be subject to penalties under federal and state law.
- 27. ANTI-TRUST:** Vendor and Purchaser recognize that overcharges resulting from antitrust violations are in fact borne by the Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges for products and services purchased hereunder.
- 28. SAFETY AND HEALTH REQUIREMENTS:** Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold Purchaser harmless from all damages assessed against Purchaser as a result of the failure of the items furnished under this Purchase Order to so comply.