1. Terms and Orders. These Purchase Order Standard Terms and Conditions (the "Terms") are applicable to and incorporated by reference into any Purchase Order (the "Order") between the vendor identified on the face of the Order ("Vendor") and The University of Puget Sound ("Purchaser"). Any Order becomes binding upon the earlier of (a) when written acknowledgement is received by Purchaser, or (b) when shipment is made according to schedule of all or any portion of the goods or provision of any of the services pursuant to this Order. Except as provided above, it is a condition of the Order that any provisions printed or otherwise contained in any acknowledgement hereof or in Vendor's invoice, inconsistent with or in addition to the Terms herein stated, and any alteration in the Order, shall have no force or effect, and that the Vendor by such acknowledgement hereby agrees that any such provisions therein or any such alterations in the Order shall not constitute any part of this agreement of purchase and sale. The Order(s) and these Terms shall constitute the complete and exclusive statement of the agreement between Vendor and Purchaser with respect to the subject matter hereof. However, if a mutually executed agreement is in place between Vendor and Purchaser before the effective date of this Order which the parties intend to cover the subject matter of this Order and/or the relationship of the parties regarding Purchaser obtaining goods or services from Vendor, then such agreement controls to the extent these Terms are specifically varied or contradicted by the terms in such agreement between the parties. The failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder.

2. Modification. No modification of this Order shall be binding on Purchaser unless Purchaser agrees to such modification in a writing signed by Purchaser. Purchaser may, at any time by written notice to Vendor and without notice to any sureties or assignees, change this Order, including without limitation changes in the method of shipment, packing, or place or time of delivery. Vendor shall proceed immediately to perform the Order as changed. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be subsequently modified in writing accordingly. Any claim for adjustment under this paragraph must be asserted within 30 days from the date of receipt by Vendor of the notification of change. Nothing in this paragraph shall excuse Vendor from proceeding with the contract as changed.

3. Cancellation. Purchaser reserves the right to cancel at any time and without cause all or any part of the undelivered portion of this Order by notice to Vendor. In the event of such cancellation, Purchaser shall not be liable to Vendor for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect the right of Purchaser to terminate the Order for default of Vendor.

4. Inspection, Warranty. Goods delivered are subject to inspection, testing, and approval by Purchaser before acceptance and payment by Purchaser. Vendor expressly warrants that all articles, materials, goods and services will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered hereunder will be: of good quality, material, and workmanship, and merchantable; free from defects; and free and clear of any and all claims, liens, and encumbrances whatsoever. This warranty shall survive any inspection, delivery, acceptance, or payment by  

Effective 7/1/2012
Purchaser. All of Vendor's warranties set forth in this Order shall be enforceable by Purchaser, Purchaser's customers and any subsequent owner or operator of the goods purchased by Purchaser. Any inspection or acceptance of such goods by Purchaser shall not be deemed to alter, waive, extinguish or otherwise affect the obligation of Vendor or the rights of Purchaser, its customers or subsequent owners or operators under these warranties. All specifications, drawings, samples, descriptions, or other materials and plans referenced in this Order or related to the goods or services are incorporated into these Terms by this reference.

5. Nonconforming Goods/Rejection. Any goods which are damaged on arrival may be exchanged by Purchaser for a period of 90 days. Purchaser may return any goods ordered hereunder, in its sole discretion, for a full refund, for a period of 90 days from the date of delivery. All goods not fully up to standard and not in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for goods described, or not shipped in containers conforming to Purchaser's specifications (or, in the absence of, such specifications, in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation, may be rejected by Purchaser and returned or held at Vendor's expense and risk. Purchaser may charge to Vendor all expenses of inspecting, unpacking, examining, repacking, storing, and reshipping any goods rejected as aforesaid. The remedies hereinabove afforded to Purchaser shall not be exclusive, but Purchaser may hold Vendor liable for any and all damages arising from any breach or default hereinafore set forth. If Purchaser rejects any goods, Purchaser shall then be relieved of any obligation related thereto, including, without limitation, any obligation to pay therefor and, in such event, Vendor shall immediately return any amount previously paid by Purchaser in prepayment of the sales price for such goods and related services, if any. Without limiting the foregoing, in the event Purchaser shall reject any goods, Purchaser shall be entitled to require the Vendor to provide other goods that comply with the terms of this Order, including (without limitation) specifications for such goods and the delivery schedule stated herein. Without limiting the foregoing, Purchaser may elect to accept defective goods, subject to an equitable reduction in price.

6. Price. Prices recorded in this Order are not subject to increase for a minimum of 90 days from the date of the Order. No additional amount shall be chargeable to Purchaser because of taxes or excises, presently or hereafter levied on Vendor. Proposed quoted prices will be valid for 180 days from the date of the proposal. However, if Vendor's quoted prices for the goods or services covered by this Order are reduced (whether in the form of a price reduction, closeout, rebate, allowances, or additional discounts offered to anyone) at the time of any shipment or service activity, Vendor agrees that the price to Purchaser for such goods or services will be reduced accordingly, and that Purchaser will be billed at such reduced prices. If the price is not recorded on this Order, price shall be that of the last previous order given by Purchaser to Vendor, subject to the provisions of this paragraph. If price includes taxes or excises, or if such taxes or excises or any part thereof are hereafter refunded to Vendor, Vendor shall immediately pay Purchaser the amount of such refund. Vendor certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical goods or goods in smaller quantities at this particular time and do not discriminate against Purchaser.

7. Payment. Unless otherwise agreed to by Purchaser in the Order, Purchaser will pay Vendor's correct and undisputed invoices for goods or services received and accepted by Purchaser within 30 days by Purchaser of receipt by Purchaser of such invoices. However, Purchaser shall have the option to pay correct and undisputed invoices for all goods or services received and accepted by Purchaser in the previous month within 30 days of the end of such month. Individual invoices must be issued for each shipment applying to the
Order. Such invoices must state (a) the number of this Order, (b) the quantity of each ordered item shipped, and (c) description of each ordered item shipped. One copy of each individual invoice must be plainly marked "Original." Any applicable sales tax, duty, excise tax, use tax or other similar tax or charge for which Purchaser has not furnished an exemption certificate must be itemized separately on each invoice. A statement of account shall be submitted monthly. Purchaser shall have the right to make payment either by check or electronic means. Such electronic payment shall be in accordance with procedures agreed to by the parties, with or without paper confirmation or receipt for each such payment. Payment of Vendor's invoices is subject to adjustment for overshipment, shortage and rejection. All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other of Purchaser's Order(s) with Vendor.

8. Delivery/Time of the Essence. Purchaser's schedules are based upon the agreement that the goods and services will be delivered by the date specified on the face of the Order. Time shall be of the essence in connection with Vendor's performance of its obligations under this contract. Purchaser may reject the shipment or provision of the services if received after the delivery date specified in the Order. The acceptance of later or defective deliveries shall not be deemed a waiver by Purchaser of its right to cancel this Order or to refuse to accept further deliveries. Vendor shall notify Purchaser of any delay and the reasons therefor. In such event, Vendor shall, upon request by Purchaser, avoid such delay (or such portion thereof as Purchaser requires) by appropriate methods, including (without limitation) incurring expenditures for overtime and expedited shipment by air or other means of expedited transport. Any costs incurred by Vendor to avoid such delay shall be borne by Vendor.

9. Packing, Marking and Shipping. Each package shall be appropriately labeled using the "Ship To" address in the Order, shall contain an itemized packing slip referencing the Purchaser's Order number, and shall be properly prepaid for shipment. Purchaser will have the right to deduct or setoff from amounts owed by Purchaser to Vendor any costs incurred by Purchaser due to Vendor's failure to add such numbers and labels. No charges will be allowed by Vendor for packaging, breaking, freight, express, or cartage unless stated herein or on the Order. Vendor shall secure the most advantageous transportation service and rates most advantageous to Purchaser as long as procurement thereof shall be consistent with Vendor's foregoing obligations.

10. Compliance With Law. Vendor agrees that the goods purchased under this Order and performance of any work pursuant to this Order are and shall be in all respects subject to and in compliance with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of the municipal, state and federal government and all subdivisions thereof which now or may hereafter govern the manufacture, sale, delivery or provision of the parts, supplies, services, and goods contemplated by this Order.

11. Indemnification by Vendor. Vendor will indemnify, hold harmless and defend Purchaser from all liability for loss, damage, expenses (including legal expenses), or injury to person or property in any manner arising out of or incident to the performance of this Order, the goods or services provided herein, or any other acts or omissions of Vendor, including without limitation claims related to or arising from patent, copyright, trade secret or trademark infringement or misappropriation.
12. **Taxes.** For services rendered by Vendor, Vendor accepts liability for payment of all payroll and social security taxes and all other federal, state, or local taxes now or hereinafter imposed by any governmental authority.

13. **Delegation, Assignment.** Vendor shall not delegate or assign any duties or claims under this Order without Purchaser's prior written consent. Any such delegation or assignment attempted without the prior written consent of Purchaser shall effect, at the option of the Purchaser, a cancellation of all Purchaser's obligations hereunder. All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other of Purchaser's orders with Vendor, whether such setoff or counterclaim arose before or after such assignment by Vendor. In the event of an assignment or delegation not prohibited hereunder, (a) Purchaser shall be furnished with two signed copies of the assignment or delegation, and (b) payment to an assignee or deleege in accordance with any such assignment or delegation shall be subject to set off and recoupment for any present or future claim or claims by Purchaser against Vendor or such assignee or deleege. Purchaser reserves the right to make, without notice to Vendor's assignee, direct statements and/or adjustments in price (or other Terms) with Vendor notwithstanding any assignment or delegation. Purchaser reserves the right to make, without notice to Vendor, direct settlement and/or adjustments in price (or other Terms) with Vendor's assignee or deleege without liability to Vendor.

14. **Governing Law.** This Order shall be governed by and construed in accordance with the laws of the State of Washington. Vendor consents to personal jurisdiction in that State. Venue for any dispute arising out of this Order, or the subject matter hereof, or related directly or indirectly to the foregoing, shall be in Pierce County, State of Washington.

15. **Costs and Attorneys' Fees.** If any litigation is brought to enforce, or arises out of, the Order or any term, clause, or provision of the Terms, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered, as well as subsequent to judgment in obtaining execution thereof.

16. **Force Majeure.** Purchaser shall not be liable or responsible for delays or failures in performance resulting from events beyond the control of Purchaser. Purchaser may delay delivery and/or acceptance of the goods or services ordered hereunder or postpone performance of Purchaser's obligations hereunder and not be liable for any such delay or failure to perform due to causes beyond its control.

17. **Partial Invalidity.** If any provision of this Order or the Terms is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

18. **Risk of Loss and Title.** The designated delivery point for the Order is FOB Destination unless otherwise indicated on the Order. Risk of loss (used in this paragraph to include damage, destruction, theft or other loss of the goods ordered) shall pass to Purchaser only upon delivery of the items to Purchaser. Vendor shall be responsible for asserting any claims against the carrier and for maintaining any required insurance against loss in transit. After delivery to Purchaser and prior to acceptance or rejection by Purchaser, Purchaser shall be responsible for risk of loss. Vendor shall bear all risk of loss as to properly rejected goods after timely written notice of rejection has been given. Title shall pass on final payment for goods shipped under this Order.
19. **Termination.** In addition to Purchaser’s cancellation rights under Section 3, Purchaser has an unrestricted right to immediately cancel and terminate the Order and its agreement with Vendor without cost or liability to Purchaser if Vendor breaches the terms of the Order or the Terms, if Vendor is otherwise unable to meet its obligations as they become due, or if, in Purchaser's reasonable judgment, a force majeure event has occurred affecting the performance of either party hereunder. The acceptance of goods or performance after Vendor's breach shall not affect the right of Purchaser to cancel its additional obligations.

20. **Limitation of Damages.** IN NO EVENT SHALL PURCHASER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, UNDER THE ORDER OR THE TERMS.

21. **Licenses.** Vendor hereby agrees to grant and Purchaser agrees to accept, a nonexclusive license to use any third-party or packaged software which is ordered or contained in the goods ordered and its related documentation under the Terms and the Order. The license hereunder is granted as of the effective date of the Order and continues until Purchaser discontinues the use of such software. Purchaser shall not disassemble, reverse engineer or decompile any part of such software unless Vendor's prior written consent is either obtained or not required by law. Vendor represents and warrants that title to and all rights and interests in such software and the documentation are Vendor's or its suppliers' proprietary property and that the software and documentation will be free of any rightful claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

22. **Works.** Purchaser shall own all right, title and interest in and to any software, printed materials or other works, products or deliverables which result from services rendered by Vendor to Purchaser under the Order and the Terms ("work(s)"). The works shall be deemed works made for hire of Purchaser for all purposes of copyright law, and copyright shall belong solely to Purchaser. In the event that any such work is adjudged to be not a work made for hire, Vendor agrees to assign, and hereby assigns, all copyright and other rights in such work to Purchaser. Vendor shall, at the expense of Purchaser, assist Purchaser or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to Purchaser all the right, title and interest in and to such works. Vendor represents and warrants that the works will be free of any rightful claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, or otherwise.