



**UNISHKA**

# Purchase Order Terms & Conditions



January 2021

These Purchase Order General Terms and Conditions (“**Terms and Conditions**”) are applicable to all Purchase Orders, Scopes of Work, Specifications, and other similar documents (collectively referred to as the “**Purchase Order**”) entered into between UNISHKA Research Service, Inc. (“**Buyer**”) and the party contracting with Buyer on the Purchase Order (“**Vendor**”). The Purchase Order and these Terms and Conditions shall be collectively referred to as the “**Agreement**.”

**1. Goods and Services.** Vendor agrees to perform work (“**Services**”) and/or provide goods (“**Goods**”) in accordance with the applicable Purchase Order and these Terms and Conditions.

**2. Price.** Buyer’s order shall be filled at the price specified on the Purchase Order. All amounts referred to in the Purchase Order are in United States Dollars, unless otherwise agreed to in writing by Buyer and Vendor. The price on the Purchase Order shall include all costs, packaging, labeling, insurance, and freight to Buyer’s facility, unless otherwise specifically noted in the Purchase Order. When the Purchase Order notes that the price is based on or is to be adjusted according to “net landed weights,” “delivered weights,” or “out turn” quantity or quality, the Purchase Order will only reflect a reasonable estimate of the price. The actual price paid will be equitably adjusted based upon Goods actually received by Buyer. The price specified on the Purchase Order, along with any applicable taxes as specified on the Purchase Order or in accordance with Section 3 of these Terms and Conditions, are intended to be all-inclusive compensation for the Goods and Services. No additional charges shall apply unless agreed to in writing by the parties.

**3. Taxes and Fees.**

- a. Taxes Payable by Vendor. Vendor agrees that Buyer is not liable for any taxes and fees that Vendor is legally obligated to pay, including but not limited to any taxes or surcharges based on gross receipts, revenue, income or the like, property taxes assessed on Vendor’s property, import or export taxes, franchise or doing business taxes, other state and local taxes normally paid by similar businesses as Vendor, or contributions or assessments for its employees and subcontractors (if any). Vendor shall indemnify, defend, and hold Buyer harmless from any claims, costs (including attorneys’ fees), and liabilities that relate to such taxes and fees.
- b. Taxes Payable by Buyer. Buyer agrees that Vendor is not liable for any taxes and fees that Buyer is legally obligated to pay, including but not limited to any taxes or surcharges based on gross receipts, revenue, income or the like, property taxes assessed on Buyer’s property, import or export taxes, franchise or doing business taxes, other state and local taxes normally paid by similar businesses as Buyer, or contributions or assessments for its employees and subcontractors. Buyer agrees to pay Vendor any sales taxes that are owed by Buyer in connection with the Services and which Vendor is required by applicable Legal Requirements to collect from Buyer. If Buyer provides Vendor a valid exemption certificate, Vendor shall not collect the taxes covered by such certificate. If Legal Requirements require Buyer to withhold taxes from payments to Vendor, Buyer may withhold those taxes and pay them to the appropriate Government Authority. Upon written request by Vendor, Buyer shall deliver to Vendor an official receipt for such taxes.

#### 4. Payments.

- 4.1. As full consideration for the delivery of the Goods, performance of the Services, and the assignment of rights or other transfers as provided in the Agreement, Buyer shall pay Vendor the amount specified in the Purchase Order.
- 4.2. Each invoice submitted by Vendor must be provided to Buyer within ninety (90) days of the delivery of the Goods or completion of the Services. All undisputed amounts payable shall be made within thirty (30) days after receipt and acceptance by Buyer of a correct invoice. Payment is considered made when Buyer's check is mailed or electronic transfer is initiated. Buyer shall not be liable for any unbilled or under-billed amounts payable for Goods or Services which are invoiced more than twelve (12) months after such Goods are delivered or Services are performed. Unless otherwise agreed to by Vendor and Buyer, no advance payment shall be made for the Goods or Services.
- 4.3. Vendor shall accompany each invoice with a cover page, or other appropriate written report, setting forth a description of the Goods and Services with respect to which such amounts are payable in sufficient detail to permit Buyer to determine the accuracy of payments required by such invoice. Applicable taxes and other charges shall be stated separately on Vendor's invoice. Vendor shall invoice Buyer only for Goods actually delivered and Services actually performed.
- 4.4. Buyer reserves the right to reject and return all incorrect invoices. An incorrect invoice is one that includes charges for Goods not delivered to Buyer, Services not performed for Buyer, Goods delivered or Services performed not to specification, or where the price and/or quantity stated on the invoice differs from the price and/or quantity agreed upon between Buyer and Vendor. Buyer reserves the right to withhold payment of any invoiced amount which is disputed in good faith by Buyer. In such event, Buyer shall provide a reasonably detailed explanation of its basis for withholding such amounts, and the parties shall use commercially reasonable efforts to resolve such dispute. Any withholding of disputed amounts will not be deemed a breach of the Agreement by Buyer.
- 4.5. For at least three (3) years after the Goods are delivered and/or the Services are performed, Vendor shall keep all usual and proper records and books of account relating to its performance under the Agreement and the amounts billed to Buyer. Buyer has the right to audit Vendor's records related to performance under the Agreement, at Buyer's expense, at any reasonable time and upon reasonable notice, to determine if Buyer was billed appropriately. In the event such audit or audits reveal overpayment by Buyer in any amount whatsoever, Vendor shall pay Buyer the amount of any such overpayment within fifteen (15) calendar days of notice from Buyer. If such audit reveals an overpayment in excess of ten percent (10%) of the amount that should have been billed to Buyer, Vendor shall also reimburse Buyer's audit expenses, including any outside expert fees, legal fees, and accounting fees, within fifteen (15) calendar days of notice from Buyer.

5. **Packaging**. All Goods shall be prepared and packaged in accordance with generally accepted industry practices suitable for the means of transportation chosen by Buyer and in accordance with Buyer's instructions. Vendor shall mark all packages and shipping documents with Buyer's applicable Purchase Order number. Seller shall include with each shipment a complete packing list identifying each Good enclosed and the quantity thereof.

6. **Delivery**.

- 6.1. If no delivery schedule is specified in the Purchase Order, the order shall be filled promptly and delivered expeditiously. If no method of shipment is specified in the Purchase Order and the Purchase Order places the cost of shipping on the Buyer, the Vendor shall use the least expensive carrier that does not compromise Vendor's ability to deliver the order promptly.
- 6.2. In the event of Vendor's failure to deliver or perform as and when promised, Buyer may exercise any or all of the following rights, in addition to any other remedy available to Buyer under the Agreement, at law, or in equity: (a) return all or part of any shipment made and charge Vendor for any loss or expense as though the Agreement had been terminated for cause, or (b) consider the Agreement breached and terminate it for cause.
- 6.3. Unless otherwise specified in the Purchase Order, transportation of Goods will be free on board to Buyer's facility as identified on the Purchase Order.

7. **Inspection, Acceptance, and Risk of Loss**.

- 7.1. All Goods and/or Services shall be received subject to Buyer's inspection, approval, count, and testing ("**Inspection**"). Buyer shall have a reasonable amount of time after receipt of the Goods and/or Services to conduct an Inspection. Buyer may reject any or all Goods and/or Services that are, in Buyer's sole judgment, nonconforming. Buyer shall pay all costs of Inspection but may recover such costs from Vendor if the Goods and/or Services are nonconforming. Actual delivery, Inspection, and acknowledgement of conformance shall constitute acceptance by Buyer. Vendor assumes all risk of loss until Buyer's acceptance of the Goods and/or Services.
- 7.2. Acceptance by Buyer of any part of the Goods and/or Services covered by a Purchase Order shall be without prejudice to Buyer's right to reject any other Goods and/or Services if, in Buyer's sole judgment, such Goods and/or Services are nonconforming. Payment for Goods and/or Services provided under the Agreement shall not constitute Buyer's acceptance of the Goods or Services.
- 7.3. Failure by Buyer to inspect or test the Goods or Services shall not affect Vendor's obligations, including but not limited to any warranties.
- 7.4. If Buyer rejects any Goods or Services, Buyer may, in its sole discretion and without prejudice to any other rights or remedies, exercise any or all of the

following, in addition to any other remedy available to Buyer: (a) return such rejected Goods to Vendor at Vendor's risk and expense (including all freight charges) for replacement or repair; (b) return all or any part of the Goods delivered for full credit of the purchase price.

**8. Services at Worksite.** Unless otherwise instructed by Buyer, Vendor will provide for receipt, unloading, storage, and protection of all materials introduced to Buyers' worksite, whether such materials are purchased by Buyer or Vendor. Vendor shall at all times keep the worksite reasonably neat and clean and, upon completion of the Services, shall remove and dispose of all rubbish, trash, and refuse. Vendor shall be responsible for the proper use and storage of all hazardous substances, as defined in 40 CFR 302.3, and all hazardous chemicals, as defined in 29 CFR 1910.1200. Vendor shall not generate any hazardous wastes on Buyer's worksite, as defined in 40 CFR 261.3, without the prior written authorization of Buyer. In the event Vendor generates such hazardous waste, Vendor must notify Buyer of the type and quantity and arrange with Buyer for proper storage and disposal, at Vendor's sole expense. If Vendor causes or discovers the release of any hazardous substances on Buyer's premises, Vendor will immediately notify Buyer.

**9. Changes.**

9.1. The charges identified in the Purchase Order are intended to be fixed for the duration of the Agreement. Buyer may from time to time change shipping instructions and schedules or direct temporary suspension of scheduled shipments or work or make other changes to the Agreement (a "Change"). If a Change causes an increase or decrease in cost or time required for performance, an equitable adjustment shall be made and the Agreement shall be modified accordingly.

9.2. If any such modification or change results in an increase in the cost of, or time required for performance of a Purchase Order, an equitable adjustment shall be negotiated in the price or delivery schedule, as applicable. After agreement regarding the equitable adjustment is reached between Vendor and Buyer, Vendor and Buyer shall within twenty (20) business days sign a Change order to incorporate the price, delivery, and/or adjustment into the Agreement.

**10. Representations and Warranties.** Seller represents and warrants that (a) all goods and services are free of any claim of any nature by any third person and that Seller will convey clear title to Buyer, (b) all services are performed in a manner acceptable in the industry and in accordance with generally accepted standards, are free from all defects, are fit for the particular purposes for which they are acquired, and are provided in strict accordance with the specifications or other requirements (including performance specifications) approved or adopted by Buyer, (c) all goods sold will be of merchantable quality, free from all defects in design, workmanship and materials, and fit for the particular purposes for which they are purchased and that the goods and services are provided in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Purchaser, (d) the prices for the goods or services sold to Purchaser under this Order are not less

favorable than those currently extended to any other customer for the same or similar goods and/or services in equal or lesser quantities, and (e) Seller shall not act in any fashion or take any action that will render Buyer liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010), which prohibits the offering, giving, or promising to offer or give or receiving, directly or indirectly, money or anything of value to any third party to assist it, them or Buyer in retaining or obtaining business or in procuring the goods or services. Purchaser's inspection, test, acceptance, or use of the goods shall not affect Seller's obligations under these warranties. Seller shall replace or correct, at Buyer's option and at Seller's cost, defects of any goods not conforming to these warranties. If Seller fails to correct defects in or replace nonconforming goods within ten (10) days from the date the Buyer notifies Seller of the defect or defects, Buyer may, on ten (10) days prior written notice to Seller, either (i) make such corrections or replace such goods and charge Seller for all costs incurred by Buyer, or (ii) revoke its acceptance of the goods in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller's cost, for the return of the goods to Seller. All warranties of Seller herein or that are implied by law shall survive any inspection, delivery, acceptance, or payment by Buyer. Any attempt by Seller to limit, disclaim, or restrict these warranties or any remedies of Buyer, by acknowledgment or otherwise, in accepting or performing this Order, will be null, void, and ineffective without Purchaser's written consent.

**11. Compliance with Laws.** Vendor agrees, represents, and warrants that it will comply with all federal, state, and local laws and regulations with respect to the Goods and Services to be provided, including but not limited to the following:

11.1. Compliance with Legal Requirements. Vendor shall (a) secure and maintain at all times any and all applicable permits, authorizations, consents, approvals, licenses, tests, and inspections required by governmental authorities as it relates to the performance of the Agreement, and (b) comply, and cause each of its employees, subcontractors, and agents to comply, with all laws, statutes, ordinances, rules, regulations, and orders of governmental authorities as are applicable to the performance of the Agreement.

11.2. Compliance with Buyer Requirements. Vendor shall advise all personnel who perform under the Agreement of the terms of the Agreement and ensure each person's compliance with such terms. Vendor shall comply, and cause each of its employees, subcontractors, and agents to comply, with all provisions of the latest version of the following documents, or any successor document: (a) Buyer's Code of Conduct, available at [www.unishka.com](http://www.unishka.com); (b) all other reasonable rules, regulations, procedures, and work requirements of Buyer that are brought to Vendor's attention; and (c) the reasonable directions and instructions given by Buyer, in each case as may be modified by Buyer from time to time. Vendor shall cooperate with and provide all necessary assistance to Buyer in order to ensure compliance with this Section.

11.3. Compliance with Employment-Related Laws. Vendor shall, at its own cost, comply with all employment-related legal requirements, including but not limited to wage



and hour, equal employment opportunity, occupational safety and health, employment standards, workers' compensation, unemployment insurance, labor, retirement benefits, employee benefits, and leave laws. Vendor represents and warrants that it offers minimum essential coverage that is affordable and minimum value, in accordance with the Internal Revenue Code and regulations thereunder, to (a) all of its employees, to the extent required by law, whom Vendor employs in connection with Vendor's performance under this Agreement; and (b) to their dependent children through the end of the month in which the child attains age 26. Vendor shall offer such coverage and shall also ensure that any subcontractors it uses offers such coverage to their employees and dependent children regardless of whether Vendor or subcontractor treats any individual as its full-time employee within the meaning of Treasury Regulations Section 54.4980H-1(a) (21). Vendor shall also ensure that it and any subcontractors it uses satisfy the reporting requirements under the Internal Revenue Code for each of its employees (including, without limitation, Sections 6055 and 6056).

**11.4. Federal Contracting and Subcontractor Requirements. Unless exempt and if applicable, Vendor and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified 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, and national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identification, national origin, protected veteran status, or disability. If applicable, Vendor and any of its subcontractors shall also abide by the requirements of 41 CFR § 61-300.10 regarding veterans' employment reports and 29 CFR Part 471, Appendix A to Subpart A regarding posting a notice of employee rights.**

11.5. Compliance with U.S. Foreign Corrupt Practices Act. Vendor understands and shall comply with the provisions of all applicable legal requirements governing anti-corruption, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended, in performing the Agreement and any other agreement or understanding between the parties. Vendor warrants and represents that it and its officers, directors, stockholders, employees, and agents have not and shall not pay, offer, or promise to pay, or authorize the payment, directly or indirectly, of money or anything of value to (a) any government, official, agent, employee of any government department or agency, whether or not acting in an official capacity; (b) any political party or official thereof or any candidate for political office; (c) any person knowing that all or any portion of such money or thing of value will be given or promised, directly or indirectly, to persons described in (a) or (b), for any purposes prohibited by such applicable legal requirements, in order to obtain or retain business with, or directing business to, Buyer or to any person or entity.

11.6. Hazardous Communication Standard. If any of the Goods are subject to the OSHA Hazard Communication Standard, 29 CFR Part 1910, or to such other state hazard communications laws, regulations, or standards as OSHA may have approved (the “**Standard**”), Vendor shall provide Buyer with a complete and accurate electronic Safety Data Sheet for each of the Goods sold and shall label each of the Goods as required by the Standard. Vendor’s failure to supply such sheet or to so label the Goods shall be deemed to constitute Vendor’s warranty, representation, and covenant that each of the Goods sold is exempt from the Standard.

**12. Indemnification.** Vendor agrees to defend (with counsel designated by Buyer), hold harmless, and indemnify Buyer and its directors, officers, employees, customers, and agents (the “**Buyer Parties**”), from and against any and all claims, damages, losses, suits, actions, demands, proceedings, expenses, costs, and liabilities of any kind (including but not limited to investigation costs and expenses, government fines, and reasonable attorneys’ fees incurred and/or those necessary to successfully establish the right to indemnification) (collectively, “**Claims**”), arising out of Vendor’s performance under the Agreement, including but not limited to (a) a defect in the design or manufacture of the Goods, or the failure to warn any person regarding risks associated with the Goods or Services; (b) any injury or death of any person (including employees, subcontractors, and other personnel of Vendor); (c) any Claim brought against Buyer by or on behalf of one or more of Vendor’s employees, subcontractors, or other personnel; (d) any Claim by a government agency or third party alleging that Buyer or Buyer Parties is a joint, controlling, or other employer of Vendor’s employees, subcontractors, or personnel; (e) the contamination of the environment and any associated clean-up costs; (f) any damage to, destruction of, or loss of property; (g) any claim by a regulatory agency or by Vendor’s employees, subcontractors, or other personnel that is attributable to or caused in whole or in part by Vendor’s failure to comply with federal, state, or local laws, ordinances, or regulations; (h) any payments assessed under Internal Revenue Code Section 4980H and regulations thereunder relating to Vendor’s employees, subcontractors, or other personnel, or any payments due as a result of Vendor’s or its subcontractor’s health plan failing to comply with the Patient Protection and Affordable Care Act and regulations thereunder; or (i) any other action or inaction arising out of Vendor’s breach of any representation, warranty, or obligation under the Agreement, or caused by the acts, omissions, negligence, or willful misconduct of Vendor or its officers, agents, employees, subcontractors, or other personnel; provided that, except for matters relating to subsection (h) of this section, in the case of negligence by both Vendor and Buyer or Buyer Parties, the foregoing indemnification shall only apply to any such claims or liability proportionately to the extent it does not result from the negligence or willful misconduct of Buyer or Buyer Parties. If any action is brought against Buyer or any Buyer Party in which indemnity is sought from Vendor, Buyer or Buyer Party shall (i) provide Vendor reasonably prompt notice of any such Claim, (ii) permit Vendor to answer and defend such Claim, and (iii) provide Vendor information and reasonable assistance at Vendor’s expense. Vendor further agrees to indemnify, hold harmless, and (at Buyer’s option) defend Buyer and Buyer Parties against all Claims arising out of or resulting from any actual or alleged infringement of patent, copyright, trademark or other intellectual property rights of any third party; provided, however, that this indemnity shall not apply to any such Claims arising out of compliance by Vendor with specifications furnished by Buyer.



Solely for the purpose of effectuating this indemnity, Vendor specifically and expressly waives any immunity that may be granted it under any workers' compensation laws or industrial insurance act. The indemnification obligation under the Agreement 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 benefits acts. This indemnity specifically applies in the case of injuries to Vendor's own employees and entitles Buyer to seek indemnity from Vendor if Vendor's employees sue Buyer for injuries incurred while performing under the Agreement.

In no event shall Vendor settle any Claim under the Agreement unless such settlement completely and forever releases Buyer from any and all liability with respect to such Claim or unless Buyer provides its prior, written consent to such settlement. Without limiting the foregoing, Buyer shall be permitted, at its own expense, to participate in the defense of any Claim under the Agreement by counsel of its own choice.

**13. Insurance.** Vendor will maintain Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed in these Terms), Automobile Liability and Employers' Liability insurance with limits as reasonably required by Purchaser, as well as appropriate Workers' Compensation insurance as will protect Vendor from all claims under any applicable workers' compensation and occupational disease acts. At Buyer's request, Vendor will furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverage is in effect, with waiver of subrogation, naming Buyer as an additional insured, and containing a covenant that such coverage and will not be canceled or materially changed until ten (10) days after prior written notice has been delivered to the Buyer. Neither the approval, disapproval, or failure to act by Purchaser regarding any insurance supplied by Vendor, nor the bankruptcy, insolvency or denial of liability by any insurance company shall relieve Vendor of full responsibility or liability for damages and accidents as set forth herein.

**14. Confidentiality.**

- 14.1. "***Confidential Information***" shall mean all information designated by Buyer or Vendor as confidential or otherwise disclosed under circumstances in which the receiving party knows or should reasonably know such information to be considered confidential by the disclosing party, including but not limited to all information or data concerning or related to Buyer's products (including but not limited to the discovery, invention, research, improvement, development, manufacture, or sale of Buyer's products), processes, or general business operations (including but not limited to sales, costs, profits, pricing methods, organization, and employee lists), and any information obtained through access to any Buyer assets or systems, which, if not otherwise described above, is of such a nature that a reasonable person would believe it to be confidential or proprietary.
- 14.2. Each party agrees, with respect to the Confidential Information disclosed to it by the other party, as follows: (a) to use the Confidential Information only for the purposes described in the Agreement; (b) to not reproduce the Confidential Information and hold in confidence and protect such Confidential Information from dissemination

to, and use by, any third party, except as otherwise permitted herein; (c) to not create any derivative work from such Confidential Information; (d) to permit access to such Confidential Information only to such of its personnel, agents, or contractors, if any, who have a need to access such Confidential Information to perform such party's obligations hereunder and who have been advised of, and have agreed in writing to treat such information in accordance with, the terms of the Agreement; and (e) to return or destroy all Confidential Information in its possession upon termination or expiration of the Agreement. Each party shall take all reasonable precautions necessary to safeguard the confidentiality of the other party's Confidential Information including, at a minimum, those precautions taken by a party to protect its own Confidential Information, which will in no event be less than a reasonable degree of care. Vendor shall notify Buyer promptly – and in all cases within twelve (12) hours of Vendor becoming aware – of any breach of the Agreement or loss or probable (in Vendor's reasonable discretion) unauthorized disclosure of Buyer's Confidential Information of which Vendor becomes aware and shall cooperate fully with Buyer to protect Buyer's Confidential Information and related rights.

- 14.3. Notwithstanding the foregoing, the provisions of Section 14.2 shall not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed, without breach of any confidentiality obligation; (b) is or becomes publicly available or enters the public domain, without breach of any confidentiality obligation; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations; (d) is already in the recipient's possession free of any confidentiality obligations at the time of disclosure; (e) is independently developed by the recipient, without breach of any confidentiality obligation; or (f) is approved for release or disclosure by the disclosing party without restriction. Notwithstanding anything in the Agreement to the contrary, either party may disclose Confidential Information in response to an order of a court or other governmental body or if otherwise required by legal requirements to be disclosed, provided that the party making the disclosure pursuant to the order shall first have given notice to the other party and made a reasonable effort to obtain a protective order.
- 14.4. Vendor agrees not to publicize or disclose the terms of the Agreement or any relationship with Buyer without the prior written consent of Buyer.
- 14.5. The obligations of the parties under this Article 14 shall continue for twelve (12) months after the expiration or earlier termination of the Agreement. Upon any termination or expiration of the Agreement, Vendor shall (a) immediately discontinue any use of Buyer's Confidential Information; (b) delete any copies of Buyer's Confidential Information from its computer storage and any other of its media, including but not limited to online and off-line libraries; and (c) return to Buyer or, at Buyer's option, destroy, any of Buyer's Confidential Information remaining in tangible form.

## **15. Termination.**

- 15.1. Buyer may immediately terminate Purchase Order or any part thereof for cause if Vendor (a) defaults or fails to comply with any portion of the Agreement (including late delivery of Goods or performance of Services); (b) makes a general assignment for the benefit of its creditors or admits in writing its inability to meet its debts as they mature; (c) files a petition in bankruptcy or commences voluntary dissolution; In the event Buyer terminates the Purchase Order for cause, Buyer will not be liable to Vendor for any amounts whatsoever, and Vendor shall be liable to Buyer for all actual and incidental damages and expenses it incurs, including costs of cover, resulting from the default that caused the termination.
- 15.2. Vendor may terminate the Agreement upon written notice to Buyer if Buyer fails to pay Vendor within thirty (30) days after Vendor notifies Buyer in writing that an undisputed payment is past due.
- 15.3. Any and all rights and remedies available under the Agreement shall be cumulative and in addition to any and all other rights and remedies which each party has or may have under any other provision of the Agreement, at law, or in equity.

**16. Injunctive Relief.** The parties acknowledge that irreparable injury will result from the failure of either party to comply with the terms of the Agreement. In the event of any actual or threatened default or breach of any of the provisions of the Agreement, the aggrieved party will have the right to specific performance or injunctive relief, as well as any monetary damages or other appropriate relief in accordance with the terms of the Agreement.

**17. Governing Law/Venue.** The Agreement and all matters arising out of or relating to the Agreement shall be interpreted and enforced under the laws of the State of Washington, including its statute of limitations, without regard to its choice of law rules and principles that would result in the application of the laws of a different jurisdiction. Any action or judicial proceeding to seek injunctive relief or otherwise enforce the Agreement shall be instituted and maintained only in the First Judicial District, in the City of Juneau, State of Alaska, or the United States District Court for the District of Alaska. Vendor expressly consents to personal jurisdiction of the state and federal courts above and waives any right to object to the exercise of personal jurisdiction by these courts. In the event any party institutes an action or proceeding against the other party with regard to the Agreement, the prevailing party of such action shall be entitled to recover from the non-prevailing party its attorney fees and costs incurred in such action or proceeding. Except as modified by these Terms and Conditions, any Purchase Order issued by Buyer shall be governed by the Uniform Commercial Code provisions applicable to transactions in goods, regardless of whether the Purchase Order is characterized as a transaction in goods or a transaction in services.

**18. Independent Contractor Classification.** The parties do not intend to create a partnership, joint venture, or employment relationship and nothing contained in the Agreement shall be deemed or construed by the parties or by any third person or entity to create the relationship of partnership, joint venture, employment, or joint employer. Vendor represents and

warrants that it has properly classified its personnel as employees or independent contractors in accordance with applicable legal requirements. To the extent Vendor utilizes employees, Vendor represents and warrants that it is an independent company (not a temporary personnel agency) and the sole employer of its employees with exclusive control and complete responsibility for hiring, firing, disciplining, setting pay and benefits (including the method of payment), assigning and directing work, supervising, preparing payrolls, paying wages, training, and otherwise setting the employment conditions and managing the employment relationship with respect to it and its employees whom Vendor employs in connection with Vendor's performance of the Agreement. Vendor represents and warrants that no other person, business, or entity, including Buyer, has an employment relationship with Vendor or Vendor's employees. At all times, Vendor shall be deemed an independent contractor with respect to Vendor's rights and obligations under the Agreement.

**19. Software Provisions.** In addition to these Terms and Conditions, if the Purchase Order involves software, including embedded software, the following terms shall apply:

- 20.1. License for Off-the-Shelf Software. Vendor hereby grants to Buyer, and Buyer hereby accepts, on the following terms and conditions, a nonexclusive and nontransferable, fully paid-up, world-wide, irrevocable, and perpetual license (unless otherwise specified in the Purchase Order or through agreement entered into by authorized signatories of both Vendor and Buyer) to use the software for the number of users or copies of the software provided on the Purchase Order (the "**License**"). Vendor and Buyer expressly agree that any software shrink-wrap and click-through software licensing agreements shall not apply to any software purchased under the Purchase Order unless the Buyer expressly agrees in writing to such shrink-wrap or click- through software licensing agreement.
- 20.2. Use of Software and Documentation. Buyer may make backup and archival copies of the software and documentation. Buyer, its agents, contractors, assignees, and employees shall have the right to use and operate the software within the scope of the License for Buyer's business purposes.

**20. Logos, Trademarks, and Copyrights.** Vendor shall not use or display the name, trademarks, service marks, logos, trade names, taglines, copyrights, or other intellectual property of Buyer in its sales promotions, advertising, press releases, or any other publications or public disclosure (including releases to existing or prospective customers) without explicit written permission from Buyer, except as required by law.

**21. Force Majeure.** Neither party shall be liable or responsible to the other party, nor be deemed to have breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events (each a "**Force Majeure Event**"): acts of God, flood, fire, earthquake or explosion, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, government order or law, actions, embargoes or blockades in effect on or after the date of the Agreement, pandemics or action by any governmental authority, or national or regional emergency. A party impacted by any such Force

Majeure Event shall give prompt notice thereof to the other party, stating the period of time the occurrence is expected to continue. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Vendor is unable to provide Goods and/or Services due to a Force Majeure Event, Buyer shall have the right, after a reasonable period of time, in its sole discretion to cancel the applicable Purchase Order at no cost, penalty, or fee to Buyer.

**22. Waiver.** Single or partial exercise of any right, remedy, power, or privilege by a party shall not preclude any other or further exercise of the same or any other right, remedy, power, or privilege. Failure or delay on the part of a party to exercise any right, remedy, power, or privilege under the Agreement with respect to any occurrence shall not be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence.

**23. Assignments/No Subcontracting.** Vendor may not assign (by operation of law, through a change of control, or otherwise) any of Vendor's rights or delegate any of Vendor's duties or obligations under the Agreement without Buyer's written permission. An assignment in violation of this provision will be null and void. The Agreement shall be binding upon Vendor's successors in interest and permitted assigns. Notwithstanding anything set forth to the contrary in the Agreement, except to the extent expressly permitted in a Purchase Order, Vendor shall not subcontract for performance of any of its obligations under the Agreement without the prior written consent of Buyer. If Buyer agrees to allow Vendor to utilize subcontractors to perform its obligations under the Agreement, Vendor shall provide a full list of all subcontractors and Vendor shall remain primarily liable for such obligations and shall be responsible for the acts and omissions of any subcontractor in connection with performance thereof.

**24. Successors and Assigns.** The Agreement shall be binding and shall inure to the benefit of the permitted successors and assigns of each party hereto.

**25. Notices.** Unless otherwise specified in the applicable Purchase Order, any notices or communications required or permitted to be given must be (a) given in writing; and (b) personally delivered or mailed, by prepaid, certified mail or overnight courier or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such Party as provided in the Purchase Order. Any such notice or communication shall be deemed to have been given on (a) the day such notice or communication is personally delivered, (b) three (3) calendar days after such notice or communication is mailed by prepaid certified or registered mail, (c) one (1) business day after such notice or communication is sent by overnight courier, or (d) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party, for purposes of the Agreement, may change his, her, or its address, email address, or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

**26. Severability.** The provisions of the Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of

the fact that, for any reason whatsoever, any other or others of them may be invalid or unenforceable in whole or in part.

**27. Survival.** These Terms and Conditions (except for the covenant to maintain insurance) will survive termination of the Agreement.

**28. Amendments.** These Terms and Conditions may not be modified, waived, terminated, or amended except as may be agreed upon by the parties in writing, signed by an authorized representative of Buyer.

**29. Miscellaneous.** The Purchase Order and these Terms and Conditions have been approved by the parties, contain the entire understanding between the parties with respect to the subject matter of the Agreement, and supersede all earlier agreements between the parties with respect to such subject matter. In the event of a conflict between the Purchase Order and these Terms and Conditions, the terms of the Purchase Order shall control. Any pre-printed purchase orders, invoices, or forms issued by Vendor shall not be binding on Buyer unless Buyer executes the purchase order, invoice, or form, or subsequently ratifies the terms of the form, at Buyer's election. The headings in these Terms and Conditions are provided for convenience of reference only and shall in no way define, modify, or restrict the meaning or interpretation of the terms or provisions of these Terms and Conditions. The terms of the Agreement shall not be interpreted in favor of or against either party as the drafter.

**30. Government contracts.** If Purchase Order bears a government contract number on its face, Vendor shall comply with all pertinent provisions of said government contract and pertinent executive orders and directives to the extent that they apply to the subject matter of Purchase Order and all such pertinent contract provisions, orders and directives are hereby incorporated by reference. A copy of the government contract's pertinent terms and conditions will be given to Vendor on request.

[END OF TERMS AND CONDITIONS]



**UNISHKA**