



Washington State
**DEPARTMENT OF
ENTERPRISE SERVICES**

**COOPERATIVE PURCHASING AGREEMENT
WASHINGTON/OREGON COOPERATIVE**

No. 23823

FOR

**MEDICAL, SPECIALTY, AND INDUSTRIAL GASES
&
PORTABLE OXYGEN UNITS**

CATEGORY: A: MEDICAL, SPECIALTY, & INDUSTRIAL GASES

**REGIONS: NORTHWEST, OLYMPIC, SOUTHWEST AND OREGON, NORTH CENTRAL, SOUTH CENTRAL AND OREGON,
AND EASTERN**

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

LINDE GAS & EQUIPMENT INC.

Dated February 26, 2024

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AND EASTERN**

This Cooperative Purchasing Agreement (“Cooperative Purchasing Agreement” or “Contract”) is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and Linde Gas & Equipment Inc., a Delaware corporation (“Contractor”) and is dated and effective as of February 26, 2024.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish enterprise procurement solutions, including statewide contracts, for goods and/or services to support Washington state agencies (“Contract”). See RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these contracts available, pursuant to an agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agencies or entities, public benefit nonprofit organizations, and any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer cooperative purchasing agreements. See RCW 39.26.050(1). Accordingly, pursuant to Washington’s Procurement Code for Goods/Services, RCW 39.26, and the Interlocal Cooperation Act, RCW 39.34, Enterprise Services and the State of Oregon have entered into an *Interstate Cooperative Agreement for Joint Participation In Each State’s Purchasing Program*. See *WA/OR Interstate Cooperative Agreement No. DASPS-56815-14* (dated January 1, 2015). The *WA/OR Interstate Cooperative Agreement* enables specified eligible purchasers to utilize certain of each state’s designated competitively solicited Contracts. The *WA/OR Interstate Cooperative Agreement* creates the opportunity for procurement efficiencies and cost savings as well as increasing potential use and marketplace incentives for vendors to contract with the states.
- C. Enterprise Services, on behalf of the State of Washington, in collaboration with the State of Oregon, as part of a competitive governmental procurement, issued Competitive Solicitation No. 23823 – Medical Specialty, and Industrial Gases (collectively “Gases”) & Portable Oxygen Units (“Portable Oxygen Units”) dated December 20, 2023 to establish Cooperative Purchasing Agreements, awarded by specified contract category and specified geographic regions, to enable eligible purchasers to procure Gases and/or Portable Oxygen Units from qualified awarded Contractors in a cost effective, efficient manner using the terms and conditions of the Cooperative Purchasing Agreement.

- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder for the above-referenced contract category(ies) and region(s).
- E. Enterprise Services has determined that entering into this Cooperative Purchasing Agreement will meet the identified needs and be in the best interest of the State of Washington.
- F. The purpose of this Cooperative Purchasing Agreement is to enable eligible purchasers to purchase the Goods and/or Services as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

- 1. **TERM.** The term of this Cooperative Purchasing Agreement is twenty-four (24) months, commencing February 26, 2024 and ending February 26, 2026; *Provided*, however, that if Contractor is not in default and if, by January 1, 2026, in Enterprise Services’ reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, Enterprise Services shall extend the term of this Cooperative Purchasing Agreement, by written amendment, for up to forty-eight (48) additional months. Any such extension shall be on the same terms and conditions as set forth in this Cooperative Purchasing Agreement. To earn the performance-based term extension, Contractor must achieve the following performance-based metrics:

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR EXTENSION
Timely Delivery:	Contractor timely delivers all goods/services within the delivery window for at least 97% of all deliveries.
Insurance Endorsements:	Contractor timely provides to Enterprise Services at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this Contract. <i>See Exhibit C – Insurance Requirements</i> at § 4.
Vendor Management Fee:	Contractor timely remits to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF). <i>Note:</i> Contractor must pay the VMF within thirty (30) calendar days of invoice from Enterprise Services. If Contractor is delinquent in timely paying the VMF for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor shall not be eligible for a performance-based extension.

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR EXTENSION
Contract Sales Reports:	<p>Contractor timely provides to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Contract quarterly sales reports.</p> <p><i>Note:</i> Contractor must provide the quarterly sales reports to Enterprise Services within thirty (30) calendar days of the quarter’s end. If Contractor is delinquent in providing the quarterly sales reports for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor shall not be eligible for a performance-based extension.</p>

2. ELIGIBLE PURCHASERS. This Cooperative Purchasing Agreement may be utilized by any of the following types of entities (each an eligible “Purchaser”):

- 2.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
- 2.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION. Any the following institutions of higher education (colleges) in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
- 2.3. ORCPP MEMBERS. Oregon Cooperative Purchasing Program (ORCPP) Members, which include the following Oregon entities:
 - Cities, counties, school districts, and special districts;
 - Qualified rehabilitation facilities and residential programs in contract with the Oregon Department of Human Services;
 - Quasi-state agencies and independent state agencies with their own procurement authority;
 - Public bodies created as governmental entities but not considered a unit of local or municipal government;
 - Oregon constitutional offices;
 - Specified Public Benefit Nonprofit Corporations; and
 - American Indian tribes or agencies.

ORCPP Members do not include Oregon state agencies subject to the Oregon Department of Administrative Services’ procurement authority.
- 2.4. CONTRACT USAGE AGREEMENT PARTIES. Any of the following types of entities that have executed a Contract Usage Agreement with Enterprise Services:

- Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
- Federal governmental agencies or entities;
- Public-benefit nonprofit corporations (i.e., public benefit nonprofit corporations as defined by RCW 24.03A.245) who receive federal, state, or local funding; and
- Federally recognized Indian Tribes located in the State of Washington.

3. SCOPE – INCLUDED GOODS AND/OR SERVICES & PRICES.

- 3.1. CONTRACT SCOPE. Pursuant to this Cooperative Purchasing Agreement, Contractor is authorized to sell and provide only those Goods and/or Services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices for Goods/Services*. Contractor shall not represent to any Purchaser under this Cooperative Purchasing Agreement that Contractor has contractual authority to sell or provide any goods and/or services beyond those set forth in *Exhibit A – Included Goods/Services*.
- (a) Goods. For purposes of this Cooperative Purchasing Agreement, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by Purchaser pursuant to this Cooperative Purchasing Agreement and as identified in the Purchase Order.
 - (b) Services. For purposes of this Cooperative Purchasing Agreement, “Services” means all services of any nature ordered by Purchaser pursuant to this Cooperative Purchasing Agreement and as identified in the Purchase Order.
 - (c) Specifications. Where applicable, specifications for Goods and/or Services are detailed in this Cooperative Purchasing Agreement and the Purchase Order.
- 3.2. ABILITY TO MODIFY SCOPE OF COOPERATIVE PURCHASING AGREEMENT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Goods and/or Services included in this Cooperative Purchasing Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) calendar days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Cooperative Purchasing Agreement.
- 3.3. ECONOMIC ADJUSTMENT. Beginning twelve (12) months after the effective date of this Cooperative Purchasing Agreement and annually thereafter. The prices set forth in *Exhibit B – Prices for Goods/Services* shall be adjusted, based upon the percent changes (whether up or down) in the United States Department of Labor, Bureau of Labor and Statistics (BLS) indices described below, for the most recent year. All calculations for the index shall be based upon the latest version of data published as of January 1 each year. Prices shall be adjusted on March 1 of each year. If an index is recoded (i.e., the recoded index is a direct substitute for the prior index according to the BLS), this Cooperative Purchasing Agreement will use the recoded index, as applicable. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available shall be used. The economic adjustment shall be calculated as follows:

$$\text{New Price} = \text{Old Price} \times (\text{Current Period Index} / \text{Base Period Index}).$$

CATEGORY A- MEDICAL, SPECIALTY, & INDUSTRIAL GASES	PPI CODE	PERCENTAGE
Industrial Gases (oxygen)	WPU06790304	70%
Truck Transportation	PCU484—484—	30%

3.4. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Cooperative Purchasing Agreement, Contractor guarantees to provide the Goods and/or Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services* (subject to economic or other adjustment as set forth herein).

3.5. CONTRACT INFORMATION. Enterprise Services shall maintain and provide to eligible Purchasers information regarding this Cooperative Purchasing Agreement, including scope, pricing, and lowest responsive, responsible bidder designation. In addition, Enterprise Services identifies awarded contractors who qualify as Washington Small Businesses, Certified Veteran-Owned Businesses, or that, pursuant to the Cooperative Purchasing Agreement provide goods/services that meet specified state procurement priorities as set forth in the Competitive Solicitation.

4. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Cooperative Purchasing Agreement and at the time any order is placed pursuant to this Cooperative Purchasing Agreement. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.

4.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

4.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Cooperative Purchasing Agreement all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor’s proper performance of this Cooperative Purchasing Agreement.

4.4. SUSPENSION & DEBARMENT. Contractor represents and warrants as previously certified in Contractor’s Bidder’s Certification, that neither Contractor nor its principals or affiliates presently are nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.

4.5. WAGE VIOLATIONS. Contractor represents and warrants as previously certified in Contractor’s Bidder’s Certification, that during the term of this Cooperative Purchasing Agreement and the three (3) year period immediately preceding the award of the Cooperative Purchasing Agreement, Contractor has not been determined, by a final and binding citation and notice of

assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.

- 4.6. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 4.7. EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS. Contractor represents and warrants, as previously certified in Contractor’s Bidder’s Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Cooperative Purchasing Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.8. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Cooperative Purchasing Agreement, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or purchase order under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) have been indicted for or otherwise criminally or civilly charged by a government entity (federal, state, local, or tribal) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state, local, or tribal) terminated for cause or default.
- 4.9. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Enterprise Services and Purchasers’ employees.
- 4.10. WASHINGTON’S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that Contractor is registered in Washington’s Electronic Business Solution (WEBS), Washington’s contract registration system and that, all of Contractor’s information therein is current and accurate and that throughout the term of this Cooperative Purchasing Agreement, Contractor shall maintain an accurate profile in WEBS.
- 4.11. WASHINGTON’S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington’s Statewide Payee Desk, which registration is a condition to payment.
- 4.12. CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that Contractor shall use commercially reasonable efforts both to promote and market the use of this Cooperative Purchasing Agreement with eligible Purchasers and to ensure that those entities that utilize this Cooperative Purchasing Agreement are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor’s Goods and/or Services or suggesting that such Goods and/or

Services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to Enterprise Services, any Purchaser, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.

- 4.13. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Cooperative Purchasing Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 4.14. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Cooperative Purchasing Agreement.
- 4.15. OPERATIONAL CAPABILITY. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Cooperative Purchasing Agreement.
- 4.16. CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Cooperative Purchasing Agreement or a similar contract, is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services (including the Purchasers hereunder) for a period of sixty (60) calendar days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington and such Purchasers; *Provided*, however, that, if costs are incurred, Contractor shall be compensated for such costs consistent with the terms and conditions pertaining to this Cooperative Purchasing Agreement for the sixty (60) day period immediately before such transition.

5. QUALITY; WARRANTY; REMEDIES.

- 5.1. GOODS WARRANTY. Contractor warrants that the Goods: (a) are free from defects in design, material, and workmanship; (b) are fit and safe for the intended purposes and appropriate for the specified application(s) (if any); (c) are consistent with recognized industry quality standards; (d) comply with the requirements, specifications, drawings, standards, and descriptions included in this Cooperative Purchasing Agreement; and (e) are produced and delivered in full compliance with applicable law ("Goods Warranty"). Contractor further warrants that it has good and marketable title to the Goods and shall keep Purchaser's property free of liens. If Purchaser receives notice of a lien caused by Contractor, Purchaser may withhold any payment otherwise due Contractor until Contractor submits proof, in a form satisfactory to Purchaser, that all lienable claims have been fully paid or waived.
- 5.2. GOODS REMEDY. If Goods do not comply with the Goods Warranty, at Purchaser's election, Contractor promptly shall remedy the defect by removing, repairing, correcting, or replacing, and/or reinstalling any defective Goods. Contractor's Goods Warranty support shall include, at Contractor's sole expense, all technical support, parts, materials and equipment, and labor, including freight and "in/out" costs required to address the defect. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor shall refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the

parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

- 5.3. SERVICES WARRANTY. Contractor warrants that: (a) Services shall be performed in a timely, efficient, and professional manner; (b) all Contractor personnel assigned to perform Services shall have the necessary skill and training; and (c) Services shall be performed in a manner consistent with the standard of care in the industry ("Services Warranty").
- 5.4. SERVICES REMEDY. If Services do not comply with the Services Warranty, Contractor promptly shall remedy the non-conformance, or at Purchaser's election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to Purchaser or refund the amounts paid for the Services.
- 5.5. IT WARRANTY. Contractor warrants, that all hardware, software, and firmware associated with Goods or Services ("IT Goods" and "IT Services", respectively) shall not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of Purchaser, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party ("IT Warranty"). The IT Warranty shall expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.
- 5.6. IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at Purchaser's election, promptly shall: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to Purchaser; or (c) refund the amounts paid for IT Services and IT Goods.
- 5.7. FAILURE TO REMEDY. If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from Purchaser, or if an emergency exists rendering it impossible or impractical for Purchaser to have Contractor provide a remedy, Purchaser may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or It Services, in which case Contractor shall reimburse Purchaser for its actual costs or, at Purchaser's option, Purchaser shall offset the costs incurred from amounts owing to Contractor.
- 5.8. TECHNICAL SUPPORT. During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents.

6. SAFETY; SECURITY; CONTRACTOR REQUIREMENTS WHILE ON PURCHASER'S PREMISES. Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

- 6.1. **REGULATORY REQUIREMENTS/SAFETY.** Goods and/or Services supplied by Contractor shall meet all applicable health, safety, and other federal, state, local, and/or tribal regulatory requirements applicable to the Goods and/or Services. All products must meet regulatory guidelines and any amendments therein, as promulgated under, but not limited to: Food and Drug Administration 21 CRF (FDA) , National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration Respiratory Standards 29 (OSHA), Code of Federal Regulation (CFR 1910.134), Underwriters Laboratories (UL), National Electrical Manufacturers Association (NEMA), National Fire Protection Association (NFPA), Department of Transportation (DOT), United States Environmental Protection Agency (EPA), American Society for Testing and Materials (ASTM), Code of Federal Regulation (CGA) and Joint Commission on Accreditation of Healthcare Organization (JCAHO).
- 6.2. **MATERIAL SAFETY DATA SHEETS.** As applicable, Contractor shall provide Purchaser with all appropriate current Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of Goods which requires such compliance.
- 6.3. **CLEAN-UP.** If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, shall remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a Site after completion of work, Purchaser shall have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.
- 6.4. **ACCIDENT AND INJURY REPORTING.** If Contractor, its agents, employees, or subcontractors are present at Purchaser's premises, Contractor promptly shall report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist Purchaser in any investigation of incidents.
- 6.5. **ON SITE REQUIREMENTS.** As applicable, while on Purchaser's premises or while interacting with Purchaser and/or Enterprise Services' personnel, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, health and security requirements and not interfere with Purchaser's operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access Purchaser's premises shall be adequately trained and at all times comply with Purchaser's requirements included but not limited to, the National Crime Information Center Criminal Background checks,
- 6.6. **IT SECURITY POLICIES.** Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which shall be made available to Contractor upon request.

7. SUBCONTRACTORS.

- 7.1. **CONTRACTOR RESPONSIBILITY.** Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Cooperative Purchasing Agreement, Contractor shall: (a) incorporate Contractor's responsibilities under this Cooperative Purchasing Agreement into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors

comply with each and every Contractor obligation set forth in this Cooperative Purchasing Agreement; (c) be the sole point of contact for Enterprise Services and any Purchasers regarding all contractual matters; (d) ensure that such subcontractors are registered in WEBS; and (e) defend, indemnify, and hold Enterprise Services and Purchasers harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier). Prior to utilizing any subcontractor to perform this Cooperative Purchasing Agreement, Contractor shall provide written notice to Enterprise Services' contract administrator. Such notice shall confirm that the subcontractor is registered in WEBS and provide the necessary information for Enterprise Services' contract administrator to include such subcontractor(s) in Washington's Purchasing Contract Management System (PCMS).

- 7.2. REPORTING. If Contractor is required to report to Purchaser and/or Enterprise Services, such report(s) shall include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated 'rollup' report combining Contractor and subcontractor data.
- 7.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Cooperative Purchasing Agreement shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless Purchaser shall pay such subcontractor directly.

8. USING THE COOPERATIVE PURCHASING AGREEMENT – PURCHASES.

- 8.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Goods and/or Services from this Cooperative Purchasing Agreement, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but including, at a minimum, a purchase order. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All Purchase Orders must reference the Contract number. The terms of this Cooperative Purchasing Agreement shall apply to any Purchase Order and, in the event of any conflict, the terms of this Cooperative Purchasing Agreement shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or any other agreement modify the terms and conditions of this Cooperative Purchasing Agreement.
- 8.2. DELIVERY REQUIREMENTS. Contractor must ensure that the Goods and/or Services are delivered or provided as required by this Cooperative Purchasing Agreement, the Purchase Order used by Purchaser, and as otherwise mutually agreed in writing between Purchaser and Contractor. The following apply to all deliveries:
- (a) Delivery staff must carry a CDL Classification and Hazardous Material license certification compliant with applicable laws.
 - (b) Delivery must be made during Purchaser's normal work hours. Contractor shall deliver the Goods and/or Services within seven (7) business days after receipt of the Purchase Order. Contractor shall acknowledge receipt of the

Purchase Order within 72 hours of receipt. The prices set forth in *Exhibit B – Prices for Goods/Services* include delivery to Purchaser's loading dock.

- (c) Contractor must complete any portion of an unfulfilled order within 72 hours unless Purchaser agrees to an extension.
- (d) At Purchaser's request, Contractor shall provide inside delivery. Inside delivery is defined as the person(s) delivering the goods shall deliver the items to exact location requested whether it is on the first or the tenth floor, etc. Purchase Orders shall state whether inside delivery is requested.
- (e) Purchaser may refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly.
- (f) All deliveries are to be made to the applicable delivery location specified by Purchaser. When applicable, Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall Contractor initiate performance prior to receipt of authorization from Purchaser. Expenses incurred otherwise shall be borne solely by Contractor.

8.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES.

- (a) Goods and/or Services purchased under this Cooperative Purchasing Agreement are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of Goods and/or Services that are not in accordance with this Cooperative Purchasing Agreement and Purchaser's Purchase Order. If there are any apparent defects in the Goods and/or Services at the time of delivery, Purchaser promptly shall notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Goods and/or Services or, at Purchaser's option, Purchaser may note any such damage on the receiving report, decline acceptance, and deduct the cost of rejected Goods and/or Services from final payment. Payment for any Goods and/or Services under such Purchase Order shall not be deemed acceptance.
- (b) At the request of the Purchaser, Contractor shall provide an industry standard written analysis of the gas(es) being delivered.

8.4. CYLINDER REQUIREMENTS. Contractor shall ensure that any cylinders delivered to Purchasers shall have a valve protection cap properly installed when shipped and delivered. The caps must remain in place during transportation and unloading, and secured in place until the cylinder has the regulator attached. There are some exceptions to this on small cylinders that do not accept cylinder caps.

- (a) Rental cylinders shall be maintained per industry standards.
- (b) Contractor must supply regulators and any additional gas handling equipment that may be required for use with cylinders.
- (c) Cylinder valves are to be of high-quality assuring not only proper gas releasing, but that regulators form a gas-tight seal when properly attached to

valves and pressure pop-off devices do not release under normal operation conditions.

- (d) All cylinders shall be manufactured in accordance with Interstate Commerce Commission (ICC), USDOT, and the applicable law in particular Interstate Commerce Commission (ICC), USDOT, and the CGA.
- (e) All cylinders shall be in good working order and complete with all fittings, valves, and protection caps, and free of dirt, debris, and rust.
- (f) A cylinder that leaks, has defective valves or safety devices, bulges, detrimental rusting or corrosion, or bears evidence of physical, fire, or heat damage must not be used until properly repaired and requalified as prescribed by applicable law.
- (g) All cylinders shall contain a positive type pressure release safety disc complies with applicable law.
- (h) All cylinders used to deliver Gases must be compatible and non-reactive with the Gases enclosed. In the event that Contractor delivers any cylinders made from substances that react with or degrade the content of the Gas, the entire order shall be replaced by Contractor at no additional charge to Purchaser.
- (i) Contractor shall test all cylinders in accordance with applicable law, . Hydrostatic testing emblems must be validated by Contractor and Contractor shall notify Purchaser of violations before such cylinders are repaired or refilled. No testing charges shall be permitted to be passed onto Purchaser for Contractor-owned cylinders. Hydrostatic testing of Purchaser-owned cylinders shall occur within 14 calendar days of the date of Contractor's receipt of such cylinders.
- (j) Contractor shall be responsible for all material, maintenance, upkeep, and testing on rental cylinders at no additional cost to Purchasers.

8.5. CYLINDER LABELING AND IDENTIFICATION. A label meeting the requirements of the USDOT shall be affixed to each cylinder. At a minimum, each cylinder label must legibly identify:

- (a) Each component gas contained in the cylinder by percentage of total cylinder contents.
- (b) Grade of the gas.
- (c) Cylinder volume in cubic feet.
- (d) Industry standard cylinder alpha/numeric size designation.
- (e) All labels shall have a date indicating the content's expiration date and/or the date the gas would be expected to have deteriorated to the point that the contents contained therein are outside. The expiration date must be at a minimum twelve (12) months from the date of delivery to Purchaser. Most gases do not have a shelf life or an expiration date. Where applicable this will be provided.
- (f) Medical cylinders must be labeled in accordance with the United States Pharmacopoeia (USP) requirements. Labels must display accepted technical terminology, batch, control numbers, etc.

- (g) Contractor shall, upon request by Purchaser, develop a method of tagging each cylinder for all facilities that have multiple laboratories or end-user locations, to ensure cylinders are delivered to the correct laboratory or location.
- (h) A medical cylinder that is delivered defective or cosmetically unsuitable for use within a facility shall be rejected by Purchaser and immediately replaced by Contractor at no additional cost to Purchaser.
- (i) All cylinder labeling must be of a quality and durability such that the label will not fall off during the period of delivery time and the time the cylinders are within Purchaser's custody, nor become unreadable by routine handling of such cylinders.
- (j) All rental cylinders shall be affixed with a label identifying Contractor's name/logo and address to ensure the correct cylinders are returned to the appropriate Contractor.

8.6. GAS CONCENTRATION AND PURITY.

- (a) Minimum specifications and requirements shall meet 40 CFR part 86.114 & California BAR97 for content, purity, blend tolerance, precision, and accuracy. Gases must meet an analytical accuracy of 1% (one percent) and a blend tolerance of 2% (two percent). Gas verification and cross-check tests and analysis shall be conducted to verify the contents, precision, and accuracy. In the event of a dispute over the results of a test conducted by Purchaser, Purchaser's findings shall prevail. Contractor shall replace the Gases and/or cylinders at no additional charge to Purchaser.
- (b) Each subsequent shipment of Gas shall meet the content, purity, blend tolerance, precision, and accuracy requirements listed herein, unless specifically changed in writing by Purchaser.
- (c) All audit Gases shall be traceable to the National Institute of Standards and Technology +/-1% (one percent) and shall have a 2% (two percent) blend tolerance.
- (d) Upon Purchaser request, if Contractor is supplying BAR97 audit gases, Contractor, within five (5) business days of such request, shall provide Purchaser with proof that Contractor is a BAR97 certified blender/supplier.

8.7. CERTIFICATE OF ANALYSIS. For all high purity, ultra-high purity, specialty Gases as well as gas mixtures referenced, Contractor shall provide, at no additional cost to Purchaser, a Certificate of Analysis and/or batch analysis for each delivery of such Gases. Any delivery without a Certificate of Analysis may be deemed unacceptable and non-compliant and therefore rejected and returned to Contractor at Contractor's expense by Purchaser. Testing shall be conducted in such a manner as to produce a complete detailed listing of all components of the cylinder. It shall not be a simple testing of expected contaminants from which a level of purity is determined by subtraction. Upon Purchaser request, Contractor shall provide proof of testing methodology for approval within five (5) business days of such request.

8.8. QUALITY CONTROL.

- (a) Contractor shall have available a technical representative within seventy-two (72) hours of notification/request by Purchaser.

- (b) Contractors who are performing onsite repairs must meet Hydrofluorocarbons (HFCs) gases which would include a certified reclaimer, Certified Technician, or certified refrigerant or recycling equipment from 40 CFR 82 to work on equipment. Contractor shall maintain a quality control program consistent with industry standards to ensure that all containers and products are maintained and supplied properly.
- (c) Upon purchaser request, Contractor shall provide Purchaser with Contractor's quality control records pertaining to Contractor deliveries to Purchaser.
- (d) Contractor shall be responsible for any damages due to non-compliant Gases e.g., contamination from improper gas formulations or mislabeled or defective cylinders. If noncompliant Gases supplied by Contractor are the suspected cause of damage to any Purchaser equipment, Purchaser shall have the right to obtain an analysis by an independent laboratory. In the event such analysis determines that the Gas supplied by Contractor was non-compliant, Contractor shall be responsible for the cost of the analysis and any resulting damages.

8.9. TRAINING. Contractor shall provide Purchasers in person or video/computer-based training, or both, at no cost to Purchaser as follows:

- (a) Training Description: Proper care and handling of cylinders.
- (b) Time Period for Training: When requested by Purchaser, Contractor shall provide video/computer-based or in-person training within 30 calendar days of Purchaser's request.
- (c) Training Location: When requested, Contractor shall provide such training at Purchaser's designated site.

Purchaser shall provide video equipment for its use of video/computer-based training.

8.10. CYLINDER EXCHANGE/RETURN.

- (a) Empty cylinders shall be picked up by Contractor within two (2) weeks of notification by Purchaser.
- (b) Contractor shall provide to Purchaser a copy of the manifest or invoice listing the number of cylinders scheduled to be picked up. Such manifest or invoice shall be signed and dated by Purchaser confirming the number of cylinders picked up by Contractor.
- (c) Purchaser shall not be responsible for any additional rental fees if Contractor fails to pick up all empty cylinders within two (2) weeks of notification.
- (d) Contractor shall, upon request by the Purchaser, pick-up empty cylinders only from authorized personnel. Purchaser shall provide Contractor with a list of authorized personnel.
- (e) Purchaser shall reimburse Contractor for the loss of or damage to any cylinder resulting from a lack of ordinary care while in Purchaser's custody; *Provided*, however, this shall not include damage due to normal use, such as handling and transportation of the containers. In the vent of reimbursable loss or damage to a cylinder, Purchaser's obligation to Contractor shall be

the lesser of the actual repair cost or the replacement cost using the current catalog/price list of the cylinder at the time the cylinder is lost or damaged.

8.11. SUBSTITUTIONS.

- (a) Contractor shall deliver only the Goods ordered and shall not substitute any item without prior written approval by Purchaser.
- (b) Substitute items delivered without Purchaser's prior written approval may be rejected and returned to Contractor at Contractor's expense.
- (c) If the specified Goods cannot be provided for reasons beyond Contractor's control (e.g., product unavailability or discontinuance), Contractor shall notify Purchaser and provide a substitute for Purchaser's review and approval.
- (d) Substitutions shall meet and/or exceed all terms, conditions, and specifications applicable to the original specified Goods.

8.12. RESOLUTION TIMES. If a deficiency is discovered at any time during Contractor's performance of this Contract, Contractor shall correct the deficiency within 24 hours from notice of the deficiency, or within 24 hours, if it is an emergency at no additional cost to Purchaser.

8.13. RESPONSE TIMES. Contractor shall respond to any mechanical faults related to cylinders, valves or accompanying equipment. If Purchaser has concerns during the performance of this Contract, Contractor must respond to Purchaser within 24 hours from notice of the concern.

8.14. PURCHASER'S ESTIMATED ANNUAL USAGE. Upon request by Contractor, Purchaser shall provide Contractor with Purchaser's estimated annual usage schedule for the Goods and/or Services. Such estimate is not an obligation to Purchase, but rather is intended to assist Contractor in its inventory management.

9. TREATMENT OF ASSETS

- (a) Title to all property furnished by DES and/or Purchaser shall remain in DES and/or Purchaser, as appropriate. Title to all property furnished by Contractor, the cost for which Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in Purchaser upon delivery of such property by Contractor and Acceptance by Purchaser. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by Purchaser in whole or in part, whichever first occurs.
- (b) Any property of DES and/or Purchaser furnished to Contractor shall, unless otherwise provided herein or approved by DES and/or Purchaser, be used only for the performance of this Contract.
- (c) Contractor shall be responsible for damages as a result of any loss or damage to property of DES and/or Purchaser which results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

- (d) If any DES and/or Purchaser property is lost, destroyed, or damaged, Contractor shall immediately notify DES and/or Purchaser and shall take all reasonable steps to protect the property from further damage.
- (e) Contractor shall surrender to DES and/or Purchaser all property of DES and/or Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
- (f) All reference to Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

10. INVOICING & PAYMENT.

10.1. CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to Purchaser's designated invoicing contact for Goods and/or Services delivered under this Cooperative Purchasing Agreement. Such invoices shall itemize the following:

- (a) Contract No. 23823;
- (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- (c) Contractor's Federal Tax Identification Number;
- (d) Date(s) of delivery;
- (e) Applicable Goods and/or Services;
- (f) Date of manufacture, batch number, storage requirements, conditions, and recommended self life;
- (g) Invoice amount; and
- (h) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Cooperative Purchasing Agreement prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

10.2. PAYMENT. Payment is the sole responsibility of, and shall be made by, the Purchaser. Purchaser's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Goods and/or Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices for Goods/Services*, Purchaser's payment is due within thirty (30) calendar days of invoice. Purchaser retains the right of setoff for any amount due or owing to Purchaser. Purchaser may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment shall not be considered late if a check or warrant is mailed within the time specified.

10.3. OVERPAYMENTS. Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by credit memo), Contractor shall pay Purchaser interest at the rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.

- 10.4. **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, Contractor shall not request or receive advance payment for any Goods and/or Services furnished by Contractor pursuant to this Cooperative Purchasing Agreement.
- 10.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 10.6. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased Goods and/or Services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchaser, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

11. CONTRACT MANAGEMENT.

- 11.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Cooperative Purchasing Agreement. Enterprise Services' contract administrator shall provide contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Cooperative Purchasing Agreement. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services	Contractor
Attn: Polina Boyle	Attn: Heather Schimke
Washington Dept. of Enterprise Services	Linde Gas & Equipment Inc.
PO Box 41411	480 E 19 th Street
Olympia, WA 98504-1411	Tacoma, WA 98421
Tel: (360) 480-3632	Tel: (509) 535-3088
Email: polina.boyle@des.wa.gov	Email: heather.schimke@linde.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 11.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Cooperative Purchasing Agreement.
- 11.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services	Contractor
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Attn: Legal Services Manager
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Email: greg.tolbert@des.wa.gov

Attn: Al Castrillo
Linde Gas & Equipment Inc.
480 E 19th Street
Tacoma, WA 98421
Email: al.castrillo@linde.com

Notices shall be deemed effective upon the earlier of receipt if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

12. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.

12.1. CONTRACT SALES REPORTING. Contractor shall report total Contract sales quarterly for this Cooperative Purchasing Agreement to Enterprise Services, as set forth below.

- (a) Contract Sales Reporting System. Contractor shall report quarterly Contract sales in Enterprise Services’ Contract Sales Reporting System. Enterprise Services shall provide Contractor with a login password and a vendor number. The password and vendor number shall be provided to the Sales Reporting Representative(s) listed on Contractor’s Bidder Profile.
- (b) Data. Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the Contract. If there are no Contract sales during the reporting period, Contractor must report zero sales.
- (c) Due dates for Contract Sales Reporting. Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all Contract sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

12.2. VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all Cooperative Purchasing Agreement sales (the purchase price is the total invoice price less applicable sales tax) under this Cooperative Purchasing Agreement.

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total Contract sales invoiced (not including sales tax) x .0125.

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services shall invoice Contractor quarterly based on Contract sales reported by Contractor. Contractor is not to remit payment until Contractor receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Contract number, the year and quarter for which the VMF is being remitted, and Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure to report accurate total net Contract sales, to submit a timely Contract sales report, or to remit timely payment of the VMF to Enterprise Services, shall be cause for Enterprise Services, at its discretion, to suspend Contractor or terminate this Contract or exercise remedies provided by law. Without limiting any other available remedies, the parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums, the sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.
- (e) Enterprise Services reserves the right, upon thirty (30) calendar days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

12.3. ANNUAL CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Contract sales report. Such report shall include, at a minimum, the following:

- (a) The Goods and/or Services sold (including, as applicable, item number or other identifier);
- (b) Per unit quantities sold;
- (c) Items and volumes purchased by Purchaser;
- (d) Shipment/delivery locations by Purchaser; and
- (e) Contract price.

This report must be provided in an electronic format that can be read by Microsoft (MS) Excel. Such report is due within thirty (30) calendar days of the annual anniversary of the effective date of this Contract.

13. RECORDS RETENTION & AUDITS.

- 13.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Cooperative Purchasing Agreement and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes, and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Cooperative Purchasing Agreement or final payment for any order placed by a Purchaser against this Cooperative Purchasing Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 13.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third-party audit, applicable records to ensure that Contractor properly has invoiced Purchasers and that Contractor has paid all applicable vendor management fees to Enterprise Services. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Cooperative Purchasing Agreement or Purchase Orders placed by a Purchaser under this Cooperative Purchasing Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Cooperative Purchasing Agreement or final payment for any order placed by a Purchaser against this Cooperative Purchasing Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 13.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Cooperative Purchasing Agreement or Purchase Orders placed thereunder, at a rate of 125% of any such overpayments, found as a result of the examination of Contractor's records; and (b) reimburse Enterprise Services for any underpayment of vendor management fees, at a rate of 125% of such fees found as a result of the examination of Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services \$500 x 1.25 = \$625); *Provided*, however, that, in the event Contractor timely discovers and corrects any Purchaser overpayment or Contractor underpayment of vendor management fees and does so prior to the initiation of any audit, Contractor shall be entitled to reimburse Purchaser or pay to Enterprise Services the actual amount of such Purchaser overpayment or such underpayment of vendor management fees.

14. INSURANCE.

- 14.1. REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Goods and/or Services and no additional payment shall be made to Contractor.
- 14.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its

employees as may be required by law, Enterprise Services may terminate this Cooperative Purchasing Agreement. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on Purchaser's behalf in the State of Washington, and only to the extent of claims against Contractor by Purchaser under the Indemnity obligations in this Cooperative Purchasing Agreement, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

15. CLAIMS.

- 15.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Cooperative Purchasing Agreement. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from Contractor's acts or omissions under this Contract.
- 15.2. THIRD-PARTY CLAIMS; GENERAL INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") to the extent arising out of Contractor's or its successors', agents', or subcontractors' negligence, other tortious fault, or intentional misconduct under this Cooperative Purchasing Agreement. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons (including death), damages to property, data breach, and/or intellectual property infringement. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
- 15.3. INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods and/or Services provided, or the use of the Goods and/or Services under this Cooperative Purchasing Agreement. If Purchaser's use of Goods and/or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for Purchaser the right to continue using the Goods and/or Services or, after consulting with Purchaser and obtaining Purchaser's consent, replace or modify the Goods and/or Services with substantially similar and functionally equivalent non-infringing Goods and/or Services.

16. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Cooperative Purchasing Agreement efficiently, as timely as practicable, and at the lowest possible level with

authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

17. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.

- 17.1. **TERMINATION.** This Cooperative Purchasing Agreement may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Cooperative Purchasing Agreement; and (c) as otherwise expressly provided for in this Cooperative Purchasing Agreement. This Cooperative Purchasing Agreement shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Cooperative Purchasing Agreement as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.
- 17.2. **TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW.** Enterprise Services may suspend or terminate this Cooperative Purchasing Agreement and Purchasers may suspend or terminate applicable Purchase Orders, in whole or in part, at the sole discretion of Enterprise Services or, as applicable, Purchaser, if Enterprise Services or, as applicable, Purchaser reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Cooperative Purchasing Agreement or applicable Purchase Order; or (b) that a change in available funds affects Purchaser's ability to pay under the applicable Purchase Order. A change of available funds as used in this section includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, Purchaser shall reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, Purchaser shall have no obligation or liability to Contractor.
- 17.3. **TERMINATION FOR PUBLIC CONVENIENCE.** Enterprise Services, for public convenience, may terminate this Cooperative Purchasing Agreement; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) calendar days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Purchaser from payment for Goods/Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

- 17.4. PURCHASER OBLIGATIONS – EXPIRATION. Upon expiration of this Cooperative Purchasing Agreement, Purchaser shall accept and take delivery of all outstanding and not yet fulfilled Purchase Orders and pay Contractor the price as set out in the Cooperative Purchasing Agreement. Notwithstanding any provision to the contrary, in no event shall a Purchaser's Purchase Order pursuant to this Cooperative Purchasing Agreement that is executed prior to expiration of this Cooperative Purchasing Agreement allow for Contractor to provide Goods and/or Services more than twelve (12) months beyond the expiration date of the Cooperative Purchasing Agreement.
- 17.5. CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION. Upon expiration or termination of this Cooperative Purchasing Agreement, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods and/or Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Cooperative Purchasing Agreement shall so continue and survive; and (b) promptly return to Purchaser all keys, badges, and other materials supplied by Purchaser for the performance of any Purchase Order entered into pursuant to this Cooperative Purchasing Agreement.
- 17.6. DEFAULT. Any of the following events shall constitute cause for Enterprise Services to declare Contractor in default of this Cooperative Purchasing Agreement:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Cooperative Purchasing Agreement;
 - (b) Contractor fails to timely report quarterly contract sales;
 - (c) Contractor fails to timely pay the vendor management fees when due;
 - (d) Contractor fails to maintain the insurance overages specified herein or timely provide to Enterprise Services the Certificate of Insurance and updates thereto specified herein; or
 - (e) Contractor breaches any representation or warranty provided herein.
- 17.7. SUSPENSION & TERMINATION FOR DEFAULT. Enterprise Services may suspend Contractor's operations under this Cooperative Purchasing Agreement immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) calendar days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Cooperative Purchasing Agreement. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Cooperative Purchasing Agreement, until such obligations have been fulfilled.
- 17.8. REMEDIES FOR DEFAULT.
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Cooperative Purchasing Agreement are in addition to all other available remedies.
 - (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement Goods and/or Services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Cooperative Purchasing Agreement price and the replacement or cover price

as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

- 17.9. **LIMITATION ON DAMAGES.** Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchaser be liable to the other for exemplary or punitive damages; *Provided*, however, that nothing contained in this Section shall in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Goods or Services warranty provided in this Cooperative Purchasing Agreement; or (c) damages subject to the Intellectual Property Indemnity section of this Cooperative Purchasing Agreement. Any limitation of either party's obligations under this Cooperative Purchasing Agreement, by delivery slips or other documentation is void.
- 17.10. **SUSPENSION/TERMINATION PROCEDURE.** Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all Goods and/or Services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Cooperative Purchasing Agreement and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

18. PURCHASE ORDER TERMINATION. Purchaser Orders between Eligible Purchasers and Contractor may be terminated as follows:

- (a) Upon the mutual written agreement of the parties to the Purchase Order; B
- (b) By the non-breaching party where the breach of the Purchase order is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in the applicable Purchase Order; or
- (c) As otherwise expressly provided for in the applicable Purchase Order.

Purchase Orders shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate the Purchase Order as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.

19. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 19.1. **WASHINGTON'S PUBLIC RECORDS ACT.** Unless statutorily exempt from public disclosure, this Cooperative Purchasing Agreement and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 19.2. **CONTRACTOR OBLIGATION.** Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to Enterprise Services that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of

Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

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

20. GENERAL PROVISIONS.

- 20.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Cooperative Purchasing Agreement.
- 20.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Cooperative Purchasing Agreement.
- 19.3 NONDISCRIMINATION.
- (a) Nondiscrimination Requirement. During the term of this Cooperative Purchasing Agreement, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
 - (b) Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Cooperative Purchasing Agreement pursuant to RCW 49.60.530(3).

- (c) **Default.** Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Cooperative Purchasing Agreement, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Cooperative Purchasing Agreement in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
 - (d) **Remedies for Breach.** Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between this Cooperative Purchasing Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.
- 20.3. **ENTIRE AGREEMENT.** This Cooperative Purchasing Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 20.4. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Cooperative Purchasing Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 20.5. **AUTHORITY.** Each party to this Cooperative Purchasing Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Cooperative Purchasing Agreement and that its execution, delivery, and performance of this Cooperative Purchasing Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 20.6. **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Cooperative Purchasing Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 20.7. **INDEPENDENT CONTRACTOR.** The parties intend that an independent contractor relationship is created by this Cooperative Purchasing Agreement. Contractor and its employees or agents

performing under this Cooperative Purchasing Agreement are not employees or agents of Enterprise Services. Contractor shall not have authorization, express or implied, to bind Enterprise Services to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through Enterprise Services or the State of Washington and Enterprise Services and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.

- 20.8. **ASSIGNMENT.** Contractor may not assign its rights under this Cooperative Purchasing Agreement without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor (a) provides written notice to Enterprise Services within thirty (30) calendar days of such event and (b) timely executes Enterprise Services' Assignment, Assumption, and Consent Agreement, Contractor may assign its rights under this Cooperative Purchasing Agreement in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Cooperative Purchasing Agreement notwithstanding any prior assignment of its rights.
- 20.9. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Cooperative Purchasing Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 20.10. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS AND/OR SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Goods and/or Services provided in Washington for the purpose of carrying out Contractor's obligations under this Cooperative Purchasing Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 20.11. **FEDERAL FUNDS.** To the extent that any Purchaser uses federal funds to purchase Goods and/or Services pursuant to this Cooperative Purchasing Agreement, such Purchaser shall specify, with its Purchase Order, any applicable requirement or certification that must be satisfied by Contractor at the time the Purchase Order is placed or upon delivery of such Goods and/or Services to Purchaser.
- 20.12. **SEVERABILITY.** If any provision of this Cooperative Purchasing Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Cooperative Purchasing Agreement, and to this end the provisions of this Cooperative Purchasing Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Cooperative Purchasing Agreement.
- 20.13. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Cooperative Purchasing Agreement, nor shall any purported oral

modification or rescission of this Cooperative Purchasing Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

- 20.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Cooperative Purchasing Agreement shall survive and remain in effect following the expiration or termination of this Cooperative Purchasing Agreement, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 20.15. GOVERNING LAW. The validity, construction, performance, and enforcement of this Cooperative Purchasing Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 20.16. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Cooperative Purchasing Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 20.17. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Cooperative Purchasing Agreement, each party shall bear its own attorneys' fees and costs.
- 20.18. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Cooperative Purchasing Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Cooperative Purchasing Agreement. Each party hereto and its counsel has reviewed and revised this Cooperative Purchasing Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Cooperative Purchasing Agreement. Each term and provision of this Cooperative Purchasing Agreement to be performed by either party shall be construed to be both a covenant and a condition.
- 20.19. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Cooperative Purchasing Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Cooperative Purchasing Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Cooperative Purchasing Agreement.
- 20.20. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Cooperative Purchasing Agreement in their entirety.
- 20.21. CAPTIONS & HEADINGS. The captions and headings in this Cooperative Purchasing Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Cooperative Purchasing Agreement nor the meaning of any provisions hereof.
- 20.22. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Cooperative Purchasing Agreement or any other ancillary agreement shall be deemed to have the same

legal effect as delivery of an original executed copy of this Cooperative Purchasing Agreement or such other ancillary agreement for all purposes.

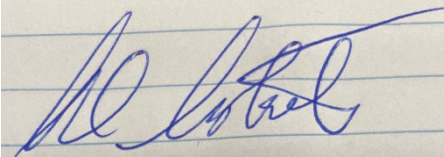
20.23. COUNTERPARTS. This Cooperative Purchasing Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Cooperative Purchasing Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Cooperative Purchasing Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

LINDE GAS & EQUIPMENT INC.,
a Delaware corporation

By: _____
Theresa Jensen

By: 

Its: Procurement Supervisor

Al Castrillo
Its: General Sales Manager, Washington

INCLUDED GOODS**Category A: Medical, Specialty, and Industrial Gases (“Gases”)**

All Gases must meet all requirements and quality standards listed below. Any reference to any regulatory guidelines shall mean the most current version.

Medical Gases

All medical gases referenced must be medical grade gases manufactured at a registered Food and Drug Administration facility. All medical gases must meet USP, NFPA and CGA regulations.

- All medical gases shall be tested in accordance with FDA requirements. All medical gases shall be tested for purity (99.5% pure).
- The purity of medical gases must equal or exceed USP specifications.
- All medical gas cylinders shall be properly purged of gases and impurities prior to filling.
- All medical gas cylinders shall be color-coded in accordance with Compressed Gas Association standards stated in Pamphlet C-9, Standard Color Market of Compressed Gases Cylinder Intended for Medical Use in the United States. A label shall be affixed to each cylinder stating the type of gas and the degree of purity of the gas or gases contained in the cylinder.

Specialty Gases

Specialty gases must be defined as audit gases, high purity gases, general purpose gases and miscellaneous gases.

- All audit gas specifications and requirements must meet 40 CFR Part 86.114 and California BAR97 for content, purity, blend tolerance, precision, and accuracy.
- Audit Gases must meet an analytical accuracy of 1% (one-percent) and a blend tolerance of 2% (two-percent).

Industrial Gases

The purity of industrial gases referenced must meet the CGA specifications. The gases shall be industrial grade, unless otherwise noted.

- Tubing shall resist kinking or crushing.
- Tubing to be between three and seven feet in length.
- Must provide for delivery of oxygen at a rate of 2-15 LPM.
- Includes standard medical grade cannula Mask, cannula and tubing must be disposable.

FOR INFORMATION ONLY:

Below is information from Washington State Ferries (WSF) on their use of gases. This information is subject to change.

- A total of 120 portable oxygen units required to service WSF needs.
- There will be fifty-three (53) units for ship use.
- Ten (10) units will be on Standby with Contractor.
- Terminal Spares will total fifty- seven (57) units.*

Terminal	Minimum in place (full units)**	Max in place (full units)**	Ship totals
Fauntleroy	2	5	9
Pier 52, Seattle 10	12	25	12
Edmonds	2	4	6
Mukilteo	2	6	6
Anacortes	5	9	14
Point Townsend	2	4	3
Point Defiance	2	4	3
Total	Reference only	57	53

Contractor is required to maintain all bottles to be maintained by DOT Regulations. The contractor must hydrostatic/ultrasonic test bottles on request by WSF, 90 days before the 5-year anniversary of last hydro test or, if on inspection from ship’s crew, the bottle is found to be suspect for any reason.

* Terminals have designated storage areas; these new packs will be replacing the existing packs already at the terminals.

**Minimum and maximum units each terminal can have at one time. Units are not to exceed or fall below these levels.

PRICES FOR GOODS

Category A: Medical, Specialty, and Industrial Gases (“Gases”)

Gas Type										
Item Number	Description	Grade	Industry Description	Nominal Capacity (UOM: cf)	Price for Northwest region	Price for Olympic region	Price for Southwest region and Oregon	Price for North Central region	Price for South Central region and Oregon	Price for Eastern region
1	Acetylene	Industrial	#5	300 cf	\$0.48	\$0.48	\$0.48	\$0.48	\$0.48	\$0.48
2	Acetylene	Industrial	#4	120 cf	\$0.47	\$0.47	\$0.47	\$0.47	\$0.47	\$0.47
3	Acetylene	Industrial	#3	75 cf	\$0.42	\$0.42	\$0.42	\$0.42	\$0.42	\$0.42
4	Acetylene	Industrial	B	40 cf	\$0.51	\$0.51	\$0.51	\$0.51	\$0.51	\$0.51
5	Acetylene	Industrial	MC	10 cf	\$1.29	\$1.29	\$1.29	\$1.29	\$1.29	\$1.29
6	Argon Pure	Industrial	300 cf	339 cf	\$0.11	\$0.11	\$0.11	\$0.11	\$0.11	\$0.11
7	Argon Pure	Industrial	220 cf	248 cf	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13
8	Argon Pure	Industrial	150 cf	154 cf	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15
9	Argon Pure	Industrial	125 cf	124 cf	\$0.16	\$0.16	\$0.16	\$0.16	\$0.16	\$0.16

10	Argon Pure	Industrial	80 cf	83 cf	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13
11	Argon Pure	Industrial	40 cf	40 cf	\$0.22	\$0.22	\$0.22	\$0.22	\$0.22	\$0.22
12	1000 Liter Micro Bulk Co2	Food			\$0.18	\$0.18	\$0.18	\$0.18	\$0.18	\$0.18
13	1000 Liter Argon Micro- Bulk Tank (325 Gal)	Industrial			\$0.07	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07
14	Argon/Co2 (75%AR/25%CO2)	Industrial	125 cf	139 cf	\$0.16	\$0.16	\$0.16	\$0.16	\$0.16	\$0.16
15	Argon/Co2 (see item 13)	Industrial	150 cf	176 cf	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14
16	Argon/Co2 (see item 13)	Industrial	200 cf	282 cf	\$0.12	\$0.12	\$0.12	\$0.12	\$0.12	\$0.12
17	Argon/Co2 (see item 13)	Industrial	300 cf	376 cf	\$0.11	\$0.11	\$0.11	\$0.11	\$0.11	\$0.11
18	Argon Liquid Gas Pack 180LT235 Dewar	Industrial	GP-4500	4320 cf	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
19	Argon/Helium Blend (Ar 75%/ He 25%)	Industrial	300 cf	314 cf	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15
20	Compressed Air	Breathing	300 cf	311 cf	\$0.08	\$0.08	\$0.08	\$0.08	\$0.08	\$0.08
21	Compressed Air	Breathing	220cf	233 cf	\$0.09	\$0.09	\$0.09	\$0.09	\$0.09	\$0.09
22	Carbon Dioxide	Industrial	50#	50 lb	\$0.37	\$0.37	\$0.37	\$0.37	\$0.37	\$0.37
23	Carbon Dioxide	Industrial	20#	20 lb.	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50
24	Helium Pure	Industrial	300 cf	291 cf	\$1.04	\$1.04	\$1.04	\$1.04	\$1.04	\$1.04
25	Helium Pure	Industrial	220 cf	217 cf	\$1.06	\$1.06	\$1.06	\$1.06	\$1.06	\$1.06
26	Helium Pure	Industrial	125 cf	109 cf	\$1.14	\$1.14	\$1.14	\$1.14	\$1.14	\$1.14
27	Helium Pure	Industrial	55 cf	50 cf	\$1.52	\$1.52	\$1.52	\$1.52	\$1.52	\$1.52
28	Helium Pure	Industrial	40 cf	40 cf	\$1.07	\$1.07	\$1.07	\$1.07	\$1.07	\$1.07
29	Hydrogen	Industrial	300 cf	261 cf	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13
30	Hydrogen	Industrial	220 cf	195 cf	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14

31	Nitrous Oxide	USP Medical	20#	20 lb	\$2.93	\$2.93	\$2.93	\$2.93	\$2.93	\$2.93
32	Nitrous Oxide	USP Medical	50#	50 lb	\$2.81	\$2.81	\$2.81	\$2.81	\$2.81	\$2.81
33	Nitrogen Pure Gas	Industrial	300 cf	304 cf	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04
34	Nitrogen Pure Gas	Industrial	150 cf	142 cf	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07
35	Nitrogen Pure Gas	Industrial	80 cf	73 cf	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
36	Nitrogen Pure Gas	Industrial	40 cf	40 cf	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14
37	Nitrogen Pure Gas	Pre Purified	300 cf	304 cf	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
38	Nitrogen Pure Gas	Ultra High Purity	300 cf	304 cf	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17
39	Nitrogen Pure Gas	Ultra High Purity	220 cf	228 cf	\$0.21	\$0.21	\$0.21	\$0.21	\$0.21	\$0.21
40	Nitrogen Liquid Gas Pk NI 180LT230 Dewar	Industrial	GP-4500	3640 cf	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02
41	Nitrogen Liquid Gas Pk NI 160LT22	Industrial	LS-160 (160 liter)	3936 cf	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02
42	Nitrogen by the Liter NI BLKLT	Industrial	LIQLTR (1 liter)	24.6 cf	\$0.01	\$0.01	\$0.01	\$0.01	\$0.01	\$0.01
43	Oxygen High Pressure	Industrial	300 cf	337 cf	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04
44	Oxygen High Pressure	Industrial	220 cf	249 cf	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04
45	Oxygen High Pressure	Industrial	150 cf	154 cf	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07
46	Oxygen High Pressure	Industrial	125 cf	124 cf	\$0.08	\$0.08	\$0.08	\$0.08	\$0.08	\$0.08
47	Oxygen High Pressure	Industrial	80 cf	83 cf	\$0.08	\$0.08	\$0.08	\$0.08	\$0.08	\$0.08
48	Oxygen High Pressure	Industrial	40 cf	40 cf	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15

49	Oxygen High Pressure	Industrial	20 cf	20 cf	\$0.22	\$0.22	\$0.22	\$0.22	\$0.22	\$0.22
50	Oxygen High Pressure	UPS Medical	300 cf	337 cf	\$0.05	\$0.05	\$0.05	\$0.05	\$0.05	\$0.05
51	Oxygen High Pressure	USP Medical	220 cf	249 cf	\$0.05	\$0.05	\$0.05	\$0.05	\$0.05	\$0.05
52	Oxygen High Pressure	USP Medical	125 cf	124 cf	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
53	Oxygen High Pressure	USP Medical	AND	14 cf	\$0.39	\$0.39	\$0.39	\$0.39	\$0.39	\$0.39
54	Oxygen High Pressure	USP Medical	ANE	24 cf	\$0.24	\$0.24	\$0.24	\$0.24	\$0.24	\$0.24
55	Oxygen Liquid Gas PK OX 180LT230 Dewar	Industrial	GP-4500	4500 cf	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02
56	Oxygen	UHP 99.993%	337 cf	337 cf	\$0.34	\$0.34	\$0.34	\$0.34	\$0.34	\$0.34
57	Acetylene	Atomic Absorption 99.6%	420 cf	420 cf	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41	\$0.41
58	Argon	UHP 99.999%	336 cf	336 cf	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25
59	Helium	UHP 99.999%	291 cf	291 cf	\$1.20	\$1.20	\$1.20	\$1.20	\$1.20	\$1.20
60	Hydrogen	UHP 99.999%	261 cf	261 cf	\$0.27	\$0.27	\$0.27	\$0.27	\$0.27	\$0.27
61	Nitrogen	UHP 99.999%	304 cf	304 cf	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17
62	Methane	UHP 99.97%	260 cf	260 cf	\$0.99	\$0.99	\$0.99	\$0.99	\$0.99	\$0.99

Cylinder Rental								
Item Number	Description	UoM Charge	Price for Northwest region	Price for Olympic region	Price for Southwest region and Oregon	Price for North Central region	Price for South Central region and Oregon	Price for Eastern region
1	High Pressure Cylinders	monthly	\$4.25	\$4.25	\$4.25	\$4.25	\$4.25	\$4.25
2	High Liquid Portable Cylinders	monthly	\$37.50	\$37.50	\$37.50	\$37.50	\$37.50	\$37.50

Other Charges								
Item Number	Description		Price for Northwest region	Price for Olympic region	Price for Southwest region and Oregon	Price for North Central region	Price for South Central region and Oregon	Price for Eastern region
1	At the option of the Contractor, the Contractor may charge a nominal fee per order for any inside deliveries per site		\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
2	For expedited delivery requests for delivery within 24 hours, the Contractor may charge a nominal fee for delivery per expedited delivery		\$75.00	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00

3	Contractor may include an additional charge for hydrostatic/ultrasonic testing of purchaser-owned cylinders per test	\$23.00	\$23.00	\$23.00	\$23.00	\$23.00	\$23.00
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INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the term of this Cooperative Purchasing Agreement, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' commercial automobile liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per accident shall not be less than \$1,000,000.
 - e. **TRANSPORTATION POLLUTION LIABILITY COVERAGE.** Contractor shall provide transportation pollution liability insurance in an amount not less than \$10,000,000 per occurrence and \$20,000,000 aggregate.
 - f. **CONTRACTOR'S POLLUTION LIABILITY INSURANCE.** Pollution liability insurance coverage (to include, without limitation, loading and unloading of all Fuel Products) with a combined single limit per occurrence of not be less than \$5,000,000, or the equivalent. Such insurance shall provide coverage for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and costs and expenses incurred in the investigation, defense or settlement of claims. Such coverage shall provide coverage for both on-site and off-site clean-up costs and cover gradual and sudden pollution.

The insurance coverage limits set forth above may be satisfied by any combination of primary, umbrella, or excess policy. The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington

for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** When specified as a required insurance coverage (see § 1 – Insurance Obligation, above) Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Cooperative Purchasing Agreement, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Cooperative Purchasing Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) calendar days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, shall result in Contractor suspension and/or cooperative purchasing agreement termination. **All policies and certificates of insurance shall include the Cooperative Purchasing Agreement number stated on the cover of this Cooperative Purchasing Agreement.** All certificates of Insurance and any related insurance documents shall be sent via email to Enterprise Services, at the email address set forth below:

Email: Polina.boyle@des.wa.gov
Note: The Email Subject line must state:
**Cooperative Purchasing Agreement Insurance Certificate –
Contract No. 23823 –Gases: Medical, Specialty, and Industrial**
5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor to Enterprise Services. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) calendar days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Cooperative Purchasing Agreement number stated on the cover of this Cooperative Purchasing Agreement.
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Cooperative Purchasing Agreement.