

# Sole Source CONTRACT Filing Justification Template

Use the following justification template for preparing to file sole source contracts in the [Sole Source Contracts Database](#) (SSCD). Once completed, copy and paste the answers into the corresponding SSCD question and answer fields. You will also need to include a copy of this completed form in the documents you post to your agency website and in [WEBS](#).

## What is a sole source contract?

*"Sole source" means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services. (RCW 39.26.010)*

*Unique qualifications or services are those which are highly specialized or one-of-a-kind.*

*Other factors which may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required goods and/or services. Past performance alone does not provide adequate justification for a sole source contract. Time constraints may be considered as a contributing factor in a sole source justification however will not be on its own a sufficient justification.*

## Why is a sole source justification required?

*The State of Washington, by policy and law, believes competition is the best strategy to obtain the best value for the goods and services it purchases, and to ensure that all interested vendors have a fair and transparent opportunity to sell goods and services to the state.*

*A sole source contract does not benefit from competition. Thus the state, through RCW 39.26.010, has determined it is important to evaluate whether the conditions, costs and risks related to the proposal of a sole source contract truly outweigh forgoing the benefits of a competitive contract.*

***Providing compelling answers to the following questions will facilitate the evaluation.***

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## Specific Problem or Need

- What is the business need or problem that requires this contract?
  - The Washington Military Department, through the Washington Youth Challenge Academy, is in need of a pre and post academic assessment and personalized instructional pathways for independent practice and to enhance instruction for Cadets.

## Sole Source Criteria

- Describe the unique features, qualifications, abilities or expertise of the contractor proposed for this sole source contract.
  - I-ready, by Curriculum Associates, is unique in that it not only offers a platform for student assessment based on common core state standards, but it also builds a pathway of individual lessons for each student to complete based on the results of their assessment. Furthermore, teachers can assign lessons in i-Ready based on content standards they are covering in their classroom.
  - Training for staff in interpreting results and designing instructional pathways is efficient and complete.
  - Data provided through the assessment can inform classroom instruction through a ‘big picture’ lens, and the data provided by individual students completing their individualized pathways provides teachers with a unique view of the strengths, challenges, and next steps for each student.
- What kind of market research did the agency conduct to conclude that alternative sources were inappropriate or unavailable? Provide a narrative description of the agency’s due diligence in determining the basis for the sole source contract, including methods used by the agency to conduct a review of available sources such as researching trade publications, industry newsletters and the internet; contacting similar service providers; and reviewing statewide pricing trends and/or agreements. Include a list of businesses contacted (if you state that no other businesses were contacted, explain why not), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.
  - The supervising agency for education in the state of Washington, the Office of the Superintendent of Public Instruction (OSPI) identifies i-Ready as one of three (3) vendors for RAN assessment for dyslexia (bulletin is accessible via this [link](#)). The other vendors identified, Pearson and Gander were contacted 12/5/23 via phone. Gander does not offer a similar product to i-Ready and Pearson offers the STAR assessment suite. This has similar assessment abilities as i-Ready, however it does not address the instructional needs of the cadets.
  - I have also conducted a broad internet search for other companies that offer a criterion based and norm referenced, assessment that also provides the opportunity for two unique instructional pathways for students to complete independently. MIL has not been able to find any to this date.
- What considerations were given to providing opportunities in this contract for small business, including but not limited to unbundling the goods and/or services acquired.
  - MIL has not been able to find any small businesses with the capacity implement the systems involved in the i-Ready programing.
- Provide a detailed and compelling description that includes quantification of the costs and risks mitigated by contracting with this contractor (i.e. learning curve, follow-up nature).
  - The learning curve is quick for this program. After an initial training on interpreting results and assigning lessons to students, training requirements drop off.

- By contracting with an OSPI recommended vendor (selected through an RFQQ process), we are significantly lessening risk to the Agency. Over 50% of districts in Washington State use i-Ready and they have a proven track record in the education industry.
- OSPI already completed an RFQQ and MIL has not been able to find any other companies that provide the needed services. We are significantly reducing procurement costs by not completing our own duplicate RFQQ when the leading agency in the state for education has already selected them a recommended vendor.
- Is the agency proposing this sole source contract because of special circumstances such as confidential investigations, copyright restrictions, etc.? If so, please describe.
  - I-Ready is a copyrighted product of Curriculum Associates, and it is not available through any other company.
- Is the agency proposing this sole source contract because of unavoidable, critical time delays or issues that prevented the agency from completing this acquisition using a competitive process? If so, please describe. For example, if time constraints are applicable, identify when the agency was on notice of the need for the goods and/or service, the entity that imposed the constraints, explain the authority of that entity to impose them, and provide the timelines within which work must be accomplished.
  - No
- Is the agency proposing this sole source contract because of a geographic limitation? If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.
  - No
- What are the consequences of not having this sole source filing approved? Describe in detail the impact to the agency and to services it provides if this sole source filing is not approved.
  - If the i-Ready assessment and instructional suite is not approved, classroom teachers will continue to lack knowledge regarding skill levels of their incoming cadets. While the Test of Adult Basic Education can provide an approximate 'grade level' for each cadet, it does not provide the detailed description of where the cadets have already met standards, what standards do they need to master, and what are the next steps to get there. Without detailed data we will be ineffective and inefficient in our attempts to intervene academically with cadets.

### Reasonableness of Cost

Since competition was not used as the means for procurement, how did the agency conclude that the costs, fees, or rates negotiated are fair and reasonable? Please make a comparison with comparable contracts, use the results of a market survey, or employ some other appropriate means calculated to make such a determination.



Washington State Department of  
**Enterprise Services**

*Contracts & Procurement*

- i-Ready is widely used throughout the state and the nation. The per-student costs quoted to the Washington Youth Challenge Academy are the same as the per-student costs quoted to other districts in the state. Over 50% of districts in Washington State use the i-ready platform with comparable per student pricing.



STATE OF WASHINGTON  
Washington Military Department  
SOLE SOURCE POSTING

February 6, 2024

The Washington Military Department contemplates awarding a sole source contract to Curriculum Associates LLC to provide Implementation materials, training, and support for their i-Ready assessment and instruction suite to the Washington Youth Challenge Academy.

The Washington Military Department requires an assessment and online instruction platform that can perform the following functions:

- 1) Provide a pre and post assessment to use as an indicator of student academic growth.
- 2) Provide a detailed diagnostic assessment that highlights the common core state standards that the student has mastered, the standards that they are yet to master, and the next steps to get them there.
- 3) Provide a personalized instruction pathway based on the performance level of the student.
- 4) Provide teachers the opportunity to offer practice on classroom content, while concurrently allowing students to complete their individualized pathway.
- 5) Correlates with state testing.

The Washington Military Department will enter into a ONE (1) YEAR contract with Curriculum Associates LLC. The contract will be issued on or after FEBRUARY 21, 2024, and will continue for a one (1) year initial term. The cost of this ONE-year contract is \$28,605.00 not including Washington state sales tax. The Washington Military Department may opt to extend the contract for an additional FOUR (4) times in ONE (1) YEAR INCREMENTS if required. The Washington Military Department determines that each optional additional ONE YEAR EXTENSION would result in equal (and/or slightly higher) consideration being added to the total contract value.

Offerors contemplating the above requirements are required to submit capability statements detailing their ability to meet the state's requirements within five (5) working days of this announcement.

Capability statements should address the following state requirements:

- The ability to determine levels of academic performance in a criterion referenced (referenced to the common core state standards).
- The ability to determine student academic growth with a pre and post assessment over a period of 20 weeks.
- The ability to use student performance data to build an instructional pathway, based on the student's current levels of performance that can be accessed independently by the student and can be used to improve skills from previous grade levels that are missing.
- The ability for teachers to assign independent practice based on content area standards.
- The ability for teachers to see which common core state standards students are struggling with as well as ideas for lessons.
- Lesson plans in Spanish to address gaps in student learning.

In the absence of other qualified sources, it is the state's intent to make a sole source award of the contract. To submit capability statements or for questions, contact:

Name: Alyssa Pearson

Phone: 253-512-7137

Email: [alyssa.anderson-pearson@mil.wa.gov](mailto:alyssa.anderson-pearson@mil.wa.gov)

# Field Order

Send Invoices to:  
 State of Washington  
 Military Department  
 Accounts Payable - Bldg 1  
 Camp Murray, WA 98430-5092



PO No: Unapproved

Submit Date: 02/01/2024

Approved Date:

Section: Admin: ADMIN

<b>Vendor:</b> Add Curriculum Associates	<b>Ship To:</b> WASHINGTON YOUTH ACA
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**Submitted By:** Alyssa Anderson Pearson   
 **Phone:** 253-433-5581   
 **Tag #:**    
 **Authority/Contract#:** Sole Source Agreement   
 **Type of Purchase:** Purchase Order

**Delivery Date:**    
 **Terms:** Select   
 **FOB Point:** Select

Qty	Part #	Description	Unit Price	Ext Price
330		i-Ready Assessment and Personalized Instruction Math Per Student	34.25	11302.50
330		i-Ready Assessment and Personalized Instruction Reading Per Stud	34.25	11302.50
1		Professional Development i-Ready Assessment and Personalized Ins	6000.00	6000.00
?				
?				

Add lines

**Special Instructions**

Special terms and conditions apply to this purchase order and are attached.

<b>Subtotal</b>	28605.00
<b>Tax Rate:</b> 9.2 % <b>Tax</b>	2631.66
<b>Shipping</b>	0.00
<b>Total</b>	31236.66

**Agency Approval:** Tim Rajcevich    Ph: 253-512-8229

- Instructions to Vendor**
- Washington State sales tax applies to this order.
  - Show Purchase Order number on all invoices, packages, and shipping documents.
  - This Purchase Order is subject to the Terms and Conditions located on the Military Department website at: <https://mil.wa.gov/contracts>

Products Received by:	Date Recvd	Receiver's Signature	Phone
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## Discretionary Sign Off

**Manual Sign-off** Request Sign-Off

*Sign-off tool unavailable until form is submitted*

### Staff Comments and Attachments

**Comments**

All goods must be received by June 30, 2024 in order to be paid with 2024 funds.

**File Attachments**

Attachment	Size
i-Readytermsandconditions combined FINAL.pdf	1.30 MB

No file chosen  
 Choose file above. Then click here.

### Payment Status

All Items Received?  ▼

Release to Pay?  ▼ (If not Upon Receipt, please explain)

### Shipment Register

Shipment	Part #	Description	Received		Login Name
			Date	Qty	
	<input type="text"/>				
				<b>Goods Received:</b>	0.00
				<b>Goods Unreceived:</b>	28605.00

### Invoice Register

Method	Invoice Date	Notes/Invoice #	Invoice Amount	
<input type="button" value="Select"/> ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="button" value="Select"/> ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="button" value="Select"/> ▼	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<a href="#">Add lines</a>				
			<b>Total Invoiced:</b>	0.00
			<b>Balance:</b>	31236.66

# Curriculum Associates®

**Prepared For:**

Jim Capecchi  
Washington Youth Challenge Academy  
1207 Carver St,  
Bremerton, WA 98312

8/29/2023

Dear Jim Capecchi,

Thank you for requesting a price quote from Curriculum Associates. The chart below provides a summary of the products and/or services included. If you have any questions or would like any changes, please contact us.

Implementation Starting: 2023-2024    Quote ID: 338282.2    Valid through: 12/31/2023

Product	Net Price
i-Ready	\$22,605.00
Professional Development	\$6,000.00
Shipping/Tax/Other:	\$2,079.66
<b>Total:</b>	<b>\$30,684.66</b>

Thank you again for your interest in Curriculum Associates.

**Sincerely**

Lintrail Dukes  
(206) 550-5515  
ldukes@cainc.com

**Please submit this quote with your purchase order**

# Curriculum Associates®

Quote ID: 338282.2    Date: 8/29/2023    Valid through: 12/31/2023

**Prepared For:**  
**Jim Capecchi**  
 Washington Youth Challenge Academy  
 1207 Carver St,  
 Bremerton, WA 98312  
 jim.capecchi@mil.wa.gov

**Your Representative:**  
 Lintrail Dukes  
 (206) 550-5515  
 ldukes@cainc.com

## i-Ready

Product Name	Item #	Qty	Net Price	Total
i-Ready Assessment and Personalized Instruction Math Per Student License 1 Year	13087.0	330	\$34.25	\$11,302.50
i-Ready Assessment and Personalized Instruction Reading Per Student License 1 Year	13089.0	330	\$34.25	\$11,302.50
i-Ready Subtotal:				\$22,605.00

## Professional Development

Product Name	Item #	Qty	Net Price	Total
Professional Development i-Ready Assessment and Personalized Instruction New User Package - Getting Good Data, Using Data to Plan Instruction, and Tailored Support	19979.0	1	\$6,000.00	\$6,000.00
Professional Development Subtotal:				\$6,000.00

## Total

List Total:	\$28,605.00
Savings:	\$0.00
Merchandise Total:	\$28,605.00
Voucher/Credit:	\$0.00
Estimated Tax:	\$2,079.66
Estimated Shipping:	\$0.00
<b>Total:</b>	<b>\$30,684.66</b>

## Special Notes

Please make PO out to Curriculum Associates.  
 All i-Ready purchases require professional development.

F.O.B.: N. Billerica, MA 01862  
 Shipping: Shipping based on MDSE total  
 Terms: Net 30 days, pending credit approval  
 Fed. ID: #26-3954988

**Please submit this quote with your purchase order**

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# Curriculum Associates®

## Information on Professional Development Sessions and COVID-19

Protecting the health and safety of the educators we serve and their students, as well as the health and safety of our employees, is of paramount importance to Curriculum Associates. While it is our preference to deliver PD sessions in person, circumstances related to COVID-19 may require us to provide sessions virtually instead. Curriculum Associates' policy is to only provide PD sessions in person where one of our employees can reach the session site by car and where adequate safety measures are in place to protect the health of our session leaders and participants. Curriculum Associates reserves the right to switch any session from in-person to virtual if we cannot reach a session site by car, if adequate safety measures cannot be put in place, or if Curriculum Associates determines that it would otherwise put its employees at risk to provide an in-person session.

If your school or district will not permit visitors at the time of a scheduled session, Curriculum Associates would be happy to provide an equivalent live, virtual session via videoconference. Similarly, Curriculum Associates will comply with your school or district's health and safety requirements regarding on-site visitors if we are given adequate advance notice. Our PD Operations team will work with school or district personnel to hold sessions in a manner that protects the safety of educators and your school community as well as Curriculum Associates employees.

We are pleased to be able to serve you in these challenging times and look forward to providing productive learning sessions to your staff. Any questions regarding scheduling in-person or virtual training sessions should be directed to [pdoperations@cainc.com](mailto:pdoperations@cainc.com).

# Curriculum Associates®

## Placing an Order

**Email:** [Orders@cainc.com](mailto:Orders@cainc.com)

**Fax:** 1-800-366-1158

**Mail:**

ATTN: CUSTOMER SERVICE DEPT.

Curriculum Associates LLC

153 Rangeway Rd

North Billerica, MA 01862-2013

Please visit [CurriculumAssociates.com](http://CurriculumAssociates.com) for more information about placing orders or contact CA's customer service department (1-800-225-0248) and reference quote number for questions.

Please attach quote to all signed purchase orders.

If tax exempt, please submit a valid exemption certificate with PO and quote in order to avoid processing delays. Exemption certificates can also be submitted to [exempt@cainc.com](mailto:exempt@cainc.com).

## Shipping Policy

Unless otherwise noted, shipping costs are calculated as follows:

Order Amount	Freight Amount
\$74.99 or less	Max charge of \$12.75
\$75.00 to \$999.99	12% of order
\$1,000 to \$4,999.99	10% of order

Order Amount	Freight Amount
\$5,000.00 to \$99,999.99	9% of order
\$100,000 and more	7% of order

Please contact your local CA representative or customer service (1-800-225-0248) for expedited shipping rates. The weight limit for an expedited order is 500lbs.

The enhanced shipping and handling services listed below are available upon request subject to the availability of our carrier partners. Please notify us of these delivery requests prior to submitting your PO so that we can include the service on your quote appropriately:

- Interior Location Delivery \$50/shipment location
- White Glove Delivery Service \$350/shipment location

If our carrier partners are unable to deliver to the location instructed on the PO or you need to change the time or location of delivery, one or more of the following fees may be applicable:

- Delivery Address Change \$100/shipment location
- Freight Storage \$150/day/shipment location
- Freight Carrier Redelivery \$100/shipment location

Unless otherwise expressly indicated, the shipping terms for all deliveries is FOB CA's Shipping Point (whether to a CA or third party facility). Risk of loss and title is passed to purchaser upon transfer of the goods to carrier, standard shipping charges (listed above) are added to the invoice or included in the unit price unless otherwise specified.

Supply chain challenges outside of Curriculum Associates' control may impact inventory availability for print product. We recommend submission of purchase orders as soon as possible to help ensure timely delivery.

## Payment Terms

Payment terms are as follows:

- With credit approval: Net 30 days
- Without credit approval: payment in full at time of order
- Accounts must be current before subsequent shipments are made

To ensure payment processing is timely and environmentally conscious, CA encourages ACH payments. If you would like to pay via ACH, please request remittance information by emailing [AR@cainc.com](mailto:AR@cainc.com).

Please send any payment notifications to [payments@cainc.com](mailto:payments@cainc.com). Credit card payments are only accepted for purchases under \$50,000.

## Invoice Receipt Preference

CA is pleased to offer electronic invoice delivery. Electronic invoice delivery allows CA to deliver your invoice in a timely and environmentally friendly manner. To request electronic invoice delivery please contact the CA Accounts Receivable team at [invoices@cainc.com](mailto:invoices@cainc.com) or by fax (1-800-366-1158). Please reference your quote number, provide a valid email address where the invoice should be directed, and indicate you would like to opt into electronic invoice delivery.

## Terms of Service

Customer's use of i-Ready® shall be subject to the i-Ready Terms and Conditions of Use and the Professional Development Terms of Service, which are attached hereto.

## Return Policy

Except for materials sold on a non-refundable basis, purchaser may return, at purchaser risk and expense, purchased materials with pre-approval from CA's Customer Service department within 12 months of purchase. Please examine your order upon receipt. Before returning material, call CA's Customer Service department (1-800-225-0248 option 4) for return authorization and documentation. When returning material, please include your return authorization number and the return form that will be provided to you by CA's Return department. i-Ready®, Toolbox®, and BRIGANCE® Online Management Systems may be returned for a pro-rated refund for the remaining time left on the contract. We do not accept returns on unused i-Ready or Toolbox licenses®, materials that have been used and/or are not in "saleable condition," and individual components of kits or sets including but not limited to BRIGANCE® Kits, Ready® student and teacher sets, Ready Classroom® student and teacher sets, and Magnetic Reading classroom kits.



Last updated February 22, 2023

## **i-Ready Connect™, i-Ready Classroom™, and Teacher Toolbox Digital Products Terms and Conditions of Use**

These Terms and Conditions of Use (the “TOU”) apply to the digital product offerings of Curriculum Associates, LLC (“CA”) including i-Ready® Assessment, i-Ready Learning™, i-Ready® Learning Games, i-Ready reports and reporting tools, Success Central, and the e-book versions and digital components of i-Ready Classroom Mathematics. These terms also apply to CA’s teacher toolbox offerings, including Magnetic Reading Teacher Digital Access (collectively “Teacher Toolbox”). These offerings are referred to in these terms of use as the “Digital Products.” These terms apply to all of the Digital Products except where CA has noted otherwise. By using your login to access the system, you agree, on behalf of your organization, to abide by these TOU. All references to “You” or “you” in these TOU refer to your organization, which has licensed access to i-Ready Connect™, i-Ready Classroom Mathematics, and/or Teacher Toolbox from CA. All authorized users within your organization are expected to comply with these TOU.

For additional terms of use that specifically apply to your use of i-Ready Classroom Mathematics, please see the Special Terms for i-Ready Classroom Mathematics sections below. For additional terms of use that specifically apply to your use of Teacher Toolbox, please see the “Special Terms for Teacher Toolbox” section below. For additional terms of use that specifically apply to your use of the Digital Resource Library please visit the *Digital Resource Library Terms and Conditions of Use* which can be found at [https://cdn.i-ready.com/instruction/content/system-check/DigitalResourceLibrary\\_Terms\\_of\\_Use.pdf](https://cdn.i-ready.com/instruction/content/system-check/DigitalResourceLibrary_Terms_of_Use.pdf).

### **Copyright and Proprietary Rights**

The Digital Products and the content contained therein are the sole property of CA and its licensors and those materials are protected by United States and international copyright laws. All copyright, trademark, and other proprietary rights in the Digital Products and in the software, text, graphics, design elements, audio, music, and all other materials contained in the Digital Products are reserved by CA and its licensors. You may not use the Digital Products in any manner that infringes the proprietary rights of any person or entity.

### **Use by Federal Government.**

The Digital Products constitute Commercial Off the Shelf (“COTS”) items as that term is defined in the U.S. Government Federal Acquisition Regulations (“FAR”). Government use rights are limited to those minimum rights required by the appropriate provisions of the FAR.

### **Data Collection, Ownership, and Security**

In connection with your use of the Digital Products, you will be asked to provide CA with data about your students. You represent and warrant that you have the right to provide CA with all of the data you input into the Digital Products. As your students use the Digital Products, data will be generated about your students’ usage, performance, and progress. Both the information you input and the data generated by your students’ usage will be referred to in these TOU as “Customer Data.” You shall own all right, title, and interest in and to the Customer Data. However, you hereby grant CA a worldwide, royalty-free license to use the Customer Data during the term of your agreement with CA to host and make access to the Digital Products available to you. You also grant CA a worldwide, royalty-free, perpetual license to use the Customer Data in de-identified format only for product development, research, and other purposes. Furthermore, CA agrees not to attempt to re-identify de-identified Customer Data and not to transfer de-identified Customer Data to any third party unless such party agrees not to attempt re-identification.

CA takes the protection of Customer Data, particularly personally identifiable Customer Data, very seriously. CA will not reveal student names, identifiers, or individual assessment results to any third parties. CA will not use any Customer Data to advertise or market to students or parents. For a full description of CA’s data handling policies and procedures, please review Curriculum Associates’ Data Handling Policy and Privacy Statement by clicking here: <https://www.curriculumassociates.com/support/privacy-and-policies/i-ready-data-handling-privacy>.

### **Access to the Digital Products**

The Digital Products are intended to be accessed only by authorized users affiliated with your organization. Your authorized users will need valid usernames and passwords to access the Digital Products. Unless there is a third party data sharing agreement in place that has been approved by CA, you may not give administrator login credentials to anyone outside of your organization, although you may provide login information to a purchasing entity affiliated with your organization. You are responsible for the integrity and security of your usernames and passwords. Please advise CA immediately if any of your usernames and/or passwords have been compromised.

CA will use commercially reasonable efforts to make the Digital Products available to you 24 hours a day, except for: (a) planned downtime, of which CA will give you reasonable notice where possible, and which CA shall use reasonable efforts to schedule during the hours from 5:00 p.m. Eastern time to 7:00 a.m. Eastern time; or (b) any unavailability caused by circumstances beyond CA's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays.

### **Limitations on Use**

You shall not, nor permit any of your authorized users to: (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or algorithms underlying the Digital Products; (b) modify, copy, translate, or create derivative works based on the Digital Products or any of the content contained therein; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Digital Products; (d) use the Digital Products for timesharing or services bureau purposes or otherwise for the benefit of a third party other than students or staff within your organization; (e) use any features or functionalities of the Digital Products with external applications, scripts, or code that may interfere with the operation of any Digital Products or pose a security risk, or (f) remove any proprietary notices from the Digital Products.

Except as described below, you may not reproduce, upload, post, transmit, download, or distribute any part of the Digital Products or information accessed at other sites through links made from i-Ready, i-Ready Classroom Mathematics, or Teacher Toolbox, other than printing out or downloading portions of the text and images of student-facing portions of i-Ready Personalized Instruction, i-Ready Classroom Mathematics, or Teacher Toolbox for use in connection with the work of your organization. For the avoidance of doubt, you may not reproduce, upload, post, transmit, download, or distribute any part of i-Ready Assessment. If you leave i-Ready Connect™ via a link to a third-party site, CA is in no way responsible for that third-party site, and your use of that third-party site will be governed by that site's terms of use, not these TOU.

You must use the Digital Products in compliance with all applicable laws, rules, and regulations, including, without limitation, laws and regulations that govern the export of technical data outside of the United States.

### **Limitation of Warranties and Liability; Indemnity**

EXCEPT AS SET FORTH IN THESE TOU, CA MAKES NO WARRANTIES WITH RESPECT TO THE DIGITAL PRODUCTS. CA DOES NOT WARRANT THAT THE DIGITAL PRODUCTS WILL MEET ALL YOUR REQUIREMENTS, WILL BE ACCURATE, OR WILL BE ENTIRELY UNINTERRUPTED OR ERROR FREE. CA EXPRESSLY EXCLUDES AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CA SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS OF ANY KIND ARISING OUT OF OR RELATED TO YOUR USE OF THE DIGITAL PRODUCTS, INCLUDING WITHOUT LIMITATION, DATA LOSS OR CORRUPTION, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED IN TORT, CONTRACT, OR OTHERWISE.

IN NO EVENT SHALL CA OR ITS LICENSORS, EMPLOYEES, AGENTS, AFFILIATED AUTHORS, OR CONTRACTORS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR MULTIPLE DAMAGES OF ANY KIND, WHETHER SUCH LIABILITY IS BASED IN TORT, CONTRACT, OR OTHERWISE. IN NO EVENT SHALL THE LIABILITY OF CA TO YOU EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID BY YOU TO CA FOR ACCESS TO THE DIGITAL PRODUCTS.

To the extent permitted by law, you shall indemnify, defend, and hold harmless CA and its licensors against any claim brought against CA and/or its licensors by a third party that arises from your use of the Digital Products, except to the extent that you are prohibited by law from providing such an indemnification, and provided that CA: (a) promptly gives you written

notice of the claim; (b) gives you sole control of the defense and settlement of the claim; and (c) provides you with reasonable assistance, at your expense, with respect to the defense of such claim.

### **Choice of Law and Jurisdiction**

These TOU shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to any conflict of law principles. You hereby submit to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts for any disputes or claims arising out of your use of the Digital Products or these TOU.

### **Special Terms for i-Ready Classroom Mathematics: Editable Materials**

For users of i-Ready Classroom Mathematics, we provide editable versions of select resources ("RCM Editable Materials") through i-Ready Classroom Mathematics Teacher Toolbox. For these RCM Editable Materials, the TOU described above still apply, except that printing, copying, and editing the RCM Editable Materials is permitted. However, you must not remove any copyright notices from the RCM Editable Materials. Curriculum Associates is not responsible for any alterations you make to the RCM Editable Materials, and Curriculum Associates makes no guarantee that the RCM Editable Materials will be of the same high quality or will accurately convey the mathematics concepts found in i-Ready Classroom Mathematics once they have been edited.

### **Special Terms for i-Ready Classroom Mathematics: Thin Common Cartridge® Customers**

For users of i-Ready Classroom Mathematics, we make select content from that program available for your licensed teachers and students as Thin Common Cartridge® ("Thin CC") for use in compliant Learning Management Systems ("LMS"). For this Thin CC content, all of the above-listed TOU apply, except that uploading/distributing the Thin CC files required to enable Thin CC content in your LMS is permitted.

Common Cartridge® is a registered trademark of the IMS Global Learning Consortium, Inc. ([www.imsglobal.org](http://www.imsglobal.org)).

### **Special Terms for Teacher Toolbox**

*These usage terms for Teacher Toolbox are designed to ensure that your students get the most out of the resources inside your Teacher Toolbox while preserving the rigor and integrity of the materials for your students and others.*

*Because the teacher materials inside Teacher Toolbox include assessments and answers to assignments, we kindly ask that you do not post or share teacher-facing materials from the Teacher Toolbox. Posting answer keys and teacher-facing materials enables students—both in your district and in other districts—to access answers to their assignments and miss out on valuable learning experiences. While our Terms of Use do allow you to post student-facing materials on a password-protected learning management system (LMS), posting of teacher-facing materials is prohibited.*

Teacher Toolbox is intended for use by teachers and school administrators only. The PDF files within Teacher Toolbox contain content that is included in CA's proprietary i-Ready Classroom and Ready curriculum materials. These PDFs are provided to you on a limited permission basis. Educators and administrators from schools or districts that have purchased licenses to Teacher Toolbox may download PDFs to their computer for their own reference and may post PDFs of student materials to any of the password-protected learning management systems (LMS) listed below, as long as such LMS can only be accessed by individuals associated with your school or district with a valid username and password. If you post Toolbox materials or content that includes or is based upon Toolbox materials in an LMS that permits content sharing, you must restrict content sharing and usage to licensed users of Teacher Toolbox. *Please note that it is a violation of these Terms of Use to save files in a manner that overrides any security settings.*

### **Approved LMS platforms:**

- Blackboard

- Brightspace
- Buzz by Agilix
- Canvas by Instructure
- Edmodo
- Google Classroom
- ITS Learning
- Microsoft Suite for Education
- Moodle
- Nearpod
- PowerSchool
- Sakai
- Seesaw
- Schoology

An approved LMS platform means that the platform meets CA's security-related requirements to permit the posting of Toolbox materials in it. CA has no affiliation with any of these platforms and does not endorse any particular LMS. CA offers no assurance that our suite of products will function properly when accessed via any approved LMS platform. If you experience any issues using an approved LMS platform then you should contact the organization that manages that particular LMS.

If you would like to upload student-facing Teacher Toolbox materials to an LMS not listed here, please contact your Partner Success Manager.

In limited quantity and for use with your own students, you may print and/or make copies of student and teacher pages from other PDFs on the Teacher Toolbox. Copies of these materials must include all copyright, trademark and other proprietary rights notices contained on the original pages from which the copies were made. You may not print, copy, or share any pages from the Read Aloud Trade Books (available only in the Teacher Toolbox for Reading at Grades K and 1). You also may not share direct links to resources inside the Teacher Toolbox. Except as specified in these Terms of Use, you may not reproduce, upload, post, transmit, download or distribute any part of the Teacher Toolbox content or information.

**Google Classroom Assignment.**

For districts that use Google Classroom, CA offers educators the ability to easily assign certain student-facing content to their students through Google Classroom. If an educator elects to utilize this feature, their use remains subject to these Terms of Use and the relevant provisions of CA's data handling policies and procedures that pertain to the Opt-In Google Classroom Assignment Feature, which can be found through the link above. CA's materials that are made available in Google Classroom may only be shared with your students and educators, and those materials may not otherwise be reproduced, uploaded, posted, transmitted, downloaded, or distributed outside of your organization.

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# Professional Learning Terms of Service

*Last Updated on May 1, 2023*

The following Professional Learning Terms of Service (“TOS”) apply to Curriculum Associates’ provision of professional-learning services (“PD Services”) to you, if you have purchased those services pursuant to one or more price quotes and/or an agreement, as applicable (collectively, the “Agreement”). Except as expressly stated in these TOS, the Agreement shall govern Curriculum Associates’ provision of PD Services. Except as otherwise provided herein, in the event of any conflict between these TOS and the Agreement, the terms of the Agreement shall prevail. By scheduling and receiving PD Services, you agree, on behalf of your organization, to abide by these TOS. All references to “You” or “you” in these TOS refer to your organization, which has elected to procure PD Services from Curriculum Associates (“CA”). All authorized users within your organization are expected to comply with these TOS.

If you license *i-Ready*® and/or Teacher Toolbox, the *i-Ready* Terms of Use, available at <http://www.i-ready.com/support>, apply to your access to and use of those digital products and services.



## PD Sessions.

You acknowledge that the fees for the PD Services are paid by you to secure the availability of Curriculum Associates personnel to provide the PD Services. Accordingly, PD Services which are not scheduled or utilized within the periods described below cannot be banked, accumulated, or saved.

You must schedule professional learning sessions ("PD Session(s)") with CA within two (2) years of the date of your purchase, as identified by the date of your purchase order. PD Sessions that are never scheduled during that timeframe cannot be rescheduled or reimbursed.

## Unattended Sessions or Last-Minute Cancellations.

You acknowledge that scheduled PD Sessions require the commitment of CA resources and personnel, regardless of whether you attend the PD Session. Accordingly, scheduled PD Sessions which you do not attend cannot be rescheduled or reimbursed if the session is not cancelled by you in advance. For in-person PD Sessions, the PD Sessions must be cancelled prior to CA's professional learning specialist arriving at the agreed-upon training location. For virtual PD Sessions, the PD Sessions must be cancelled prior to CA's professional learning specialist launching the virtual training session.

## Personnel and Safety.

PD Services will be performed in person unless otherwise agreed upon by you and CA. Curriculum Associates will control the method and manner of performing the PD Services. For both on-site and virtual PD Sessions, you agree that you will make your staff available to receive the PD Services for scheduled PD Sessions. You are responsible for providing Curriculum Associates' professional-learning personnel ("PD Personnel") with any necessary physical and systems access, or any other assistance as reasonably required, to allow them to provide PD Sessions. Where PD Sessions will be provided on site, you are also responsible for providing PD Personnel with a safe working environment in which to provide the PD Sessions. It is our expectation that PD Personnel will be treated respectfully and not harassed or subjected to

inappropriate, discriminatory, or unlawful behavior. Should CA determine, in its sole discretion, that its PD Personnel will not be able to provide PD Sessions safely on site, CA reserves the right to provide the PD Sessions virtually. Furthermore, should any PD Personnel be subjected to harassment or inappropriate, discriminatory, or unlawful behavior in the course of providing PD Services, CA reserves the right to discontinue providing PD Services to you and refund you for any prepaid but unused PD Sessions.

## Payments.

Payment terms for the PD Services are as set forth in the Agreement. Unless otherwise expressly stated in the Agreement, all fees for PD Services are due and payable in advance. Such fees are non-cancellable and non-refundable unless otherwise agreed upon by the parties.

## Confidentiality.

To provide services that meet your specific needs, Curriculum Associates may demonstrate use of our products and services with your specific implementation of our product offerings, such as *i-Ready*. The PD Services are intended for your internal use only, and you agree that those sessions will be attended by your employees only and not by anyone else. For the avoidance of doubt, third party consultants and advisors, and competitors of CA cannot attend PD Sessions.

## Intellectual Property.

Notwithstanding anything to the contrary in the Agreement, all right, title and interest in any and all materials provided under the Agreement, including, without limitation, any print materials, digital materials or online offerings, and all intellectual property rights therein, are and will remain with Curriculum Associates, and you have no right, license, or authorization except for the limited license right to use such materials in accordance with the usage terms for Curriculum Associates software and services, as further set forth in the Agreement.

## Liability.

ALL PD SERVICES ARE PROVIDED "AS IS" AND NOTWITHSTANDING ANYTHING TO THE

CONTRARY IN THE AGREEMENT, CURRICULUM ASSOCIATES HEREBY DISCLAIMS ALL WARRANTIES RELATED TO SUCH PD SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

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## GENERAL TERMS AND CONDITIONS

**DEFINITIONS**--As used throughout this Contract, the following terms shall have the meaning set forth below:

- a. **"Department"** shall mean the Washington Military Department ("WMD"), as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
  - b. **"The Adjutant General"** as it is used herein shall mean the Director of the Washington Military Department. The term **"Authorized Department Representative"** shall mean those persons who have written authorization to sign Department contracts and represent Department as signed and directed by The Adjutant General.
  - c. **"Contractor"** shall mean that firm, organization, group, individual, or other entity performing services under this Contract, and shall include all employees of the Contractor. It shall include any subcontractor retained by the prime Contractor as permitted under the terms of this agreement.
  - d. **"Subcontractor"** shall mean one, not in the employment of the Contractor, who is performing all or part of those services under this Contract through a separate Contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
  - e. **"WAC"** is defined and used herein to mean the Washington Administrative Code.
  - f. **"RCW"** is defined and used herein to mean the Revised Code of Washington.
2. **CONTRACTOR NOT EMPLOYEE OF AGENCY** -- The Contractor, and/or employees or agents performing under this agreement are not employees or agents of the Department in any manner whatsoever. The Contractor will not be presented as nor claim to be an officer or employee of the Department or of the State of Washington by reason hereof, nor will the Contractor make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the Department or of the State of Washington, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW; OFM Reg. 4.3.1.1.8.
- It is understood that if the Contractor is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right.
- If the Contractor is an individual currently employed by a Washington State agency, the Department shall obtain proper approval from the employing agency or institution before entering into this Contract. A statement of "no conflict of interest" shall be submitted to the Department.
3. **COMPLIANCE WITH APPLICABLE LAW**  
The Contractor and all subcontractors shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, tribal government, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 C.F.R. Sec. 52.203-5); Public Records Act (RCW 42.56); and safety and health regulations.
- In the event of the Contractor's or a subcontractor's noncompliance or refusal to comply with any applicable law or policy, the Department may rescind, cancel, or terminate the Contract in whole or in part. The Contractor is responsible for any and all costs or liability arising from the Contractor's failure to comply with applicable law.
4. **NONDISCRIMINATION** -- During the performance of this agreement, the Contractor shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

- a. Nondiscrimination in Employment: The Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- b. The Contractor shall take action to ensure that employees are employed and treated during employment without discrimination because of their race, color, sex, sexual orientation religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap.
- c. Nondiscrimination Requirement. During the term of this Contract, 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.
- d. 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 Contract pursuant to RCW 49.60.530(3).

Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers.

#### 5. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS –**

- a. Default. Notwithstanding any provision to the contrary, Agency 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 Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency 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), Agency may terminate this Contract 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.
- b. 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 the original contract 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. Agency 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 Agency for default under this provision.
- c. Notwithstanding the foregoing, in the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Department. The Contractor shall, however, be given a reasonable time in which

to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

6. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES** -- In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). To the extent possible, the Contractor will solicit and encourage minority-owned and women-owned business enterprises who are certified by the OMWBE under the state of Washington certification program to apply and compete for work under this Contract. Voluntary numerical MWBE participation goals have been established, and are indicated herein: Minority Business Enterprises: (MBE's): 10% and Woman's Business Enterprises (WBE's): 6%.

7. **SUBCONTRACTING** -- All subcontracts entered into pursuant to this Contract shall incorporate this Contract in full by reference. Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract and after original Contract award, without obtaining prior written approval of the Department. Contractor shall use a competitive process in award of any contracts with subcontractors that are entered into after original Contract award. The Military Department may request a copy of any and/or all subcontracts that exist for work being completed under this Contract. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Department for any breach in the performance of the Contractor's duties.

This clause does not include Contracts of employment between the Contractor and personnel assigned to work under this Contract.

8. **INDEMNIFICATION** -- To the fullest extent permitted by the law, the Contractor expressly agrees to and shall indemnify, defend and hold harmless the State and its agencies, officials, agents and employees from and against all third party claims, actions, costs, damages, or expenses of any nature arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend and hold harmless also includes any claim by the Contractor's agents, employees, representatives or any subcontractor or its employees. The Contractor's obligation to defend includes payment of any reasonable documented costs or attorneys' fees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The Contractor expressly agrees to waive its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend, and hold harmless the State and its agencies, officials, agents or employees.

9. **COVENANT AGAINST CONTINGENT FEES** -- The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

The Department shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

10. **NONASSIGNABILITY** -- Neither this Contract, nor any claim arising under this Contract, nor the work to be provided under this Contract, and any claim arising thereunder, shall be assigned or delegated by either party in whole or in part, without the express prior written consent of the other

party, which consent shall not be unreasonably withheld, except in connection with the sale of all or substantially all of the outstanding assets or equity of Contractor.

11. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336**, 42 U.S.C. 12101 et seq. and its implementing regulations, 28 CFR Part 35. The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

12. **RECORDS, MONITORING AND AUDIT ACCESS**

- a. The Contractor shall perform under the terms of the Contract, and the Department has responsibility for reasonable and necessary monitoring of the Contractor's performance. The Department shall conduct Contract monitoring activities on a regular basis. Monitoring means any planned, ongoing, or periodic activity that measures and ensures Contractor compliance with the terms, conditions, and requirements of a Contract. Monitoring involves prudent collection of information about Contractor operations and is not limited to site visits or the completion of formal reviews. Monitoring may include periodic Contractor reporting to the Department, Department review of audit reports, invoice reviews, onsite reviews and observations, and surveys. Adequate documentation is essential for effective Contract monitoring and will include copies of letters, meeting notes, and records of phone conversations as evidence that conscientious monitoring has occurred during the period of the Contract.
- b. The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Department, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or Contract. The Contractor will retain all books, records, documents, and other materials relevant to this Contract for six (6) years from the date Contract final payment is made hereunder, and make them available for inspection by persons authorized under this provision.
- c. The Department or the State Auditor or any of their representatives and federal officials so authorized by law, rule, regulation, or contract shall have full access to and the right to examine during normal business hours no more often than once per year, all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all Contracts, invoices, materials, payrolls, and records of matters covered by this Contract. Such rights last for six (6) years from the date final payment is made hereunder.
- d. The Contractor shall cooperate with and freely participate in any other monitoring or evaluation activities conducted by the Department that are pertinent to the intent of this Contract.
- e. Any audits and examinations are subject to Contractor's confidentiality obligations to its other customers. Any audits shall be upon reasonable prior written notice during normal business hours, and in a manner which limits disruption to its business operations.

13. **ACCESS TO PUBLIC RECORDS**

- a. The parties acknowledge that the Department is subject to the Public Records Act, Chapter 42.56 RCW, and that records prepared, owned, used or retained by the Department relating to the conduct of government or the performance of any governmental or proprietary function are available for public inspection or copying, except as exempt under RCW 42.56 or other statute which exempts or prohibits disclosure of specific information or records.

- b. The Contractor shall provide access to data generated under this Contract to the Department and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models, .
- c. Access to Data. The Contractor shall provide access to all data generated under the Contract to the Department, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. For the purposes of this requirement, "data" includes all information that supports the findings, conclusions and recommendations of the contractor's reports, including computer models and methodology for those models.

14. **DISCLOSURE** -- The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Contractor's responsibilities with respect to services provided under this Contract is prohibited except by prior written consent of the Department or as required to comply with the Public Records Act or court order.

Contractor acknowledges that the Department is subject to Chapter 42.56 RCW, the Public Records Act, and that this Contract shall be a public record as defined in RCW 42.56.0.10. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with Chapter 42.56 RCW, the Department shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Department will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Department will release the requested information on the date specified.

15. **RIGHTS IN DATA** – [Intentionally omitted]

16. **PUBLICITY** -- The Contractor agrees to submit to the Department all advertising and publicity matters relating to this Contract wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department.

17. **PRIVACY** -- Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Department or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Department. Contractor shall certify return or destruction of all personal information upon expiration of this Contract and written notice from the Department. Any destruction of data will not include data which may have been archived for disaster recovery purposes, which data will be removed from our backup servers over time, in accordance with our company's data retention and destruction policies, consistent with standard industry practice. Any such archived data shall remain fully subject to the confidentiality obligations set forth in the agreement. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Department for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

For purposes of this Contract and for the avoidance of doubt, "data" or "personal information" does not include de-identified data, which refers to data generated from usage of Contractor's proprietary software solutions from which all personally identifiable information has been removed or obscured so that it does not identify any individual and there is no reasonable basis to believe that the information can be re-identified or otherwise used to identify any individual ("De-identified Data"). Contractor maintains the perpetual right to use De-identified Data for product development, product functionality and research purposes, as permitted under the Family Educational Rights and Privacy Act (FERPA).

18. **TREATMENT OF ASSETS**

a. [Intentionally omitted]

b.

19. **SITE SECURITY** – While on Department premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.

20. **ATTORNEY'S FEES** – In the event of litigation or other action brought to enforce Contract terms or alternate dispute resolution process, each party agrees to bear its own attorney's fees and costs.

21. **TAXES** – All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

22. **TRAVEL AND SUBSISTENCE REIMBURSEMENT** -- Unless the Contract specifically provides for different rates, any travel or subsistence reimbursement expressly authorized under the Contract shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 and the State Administrative and Accounting Manual (SAAM) Chapter 10.90 – Travel Rates, <http://www.ofm.wa.gov/policy/10.90.htm> as now existing or amended. Receipts and documentation for travel or subsistence expenses that are authorized under this Contract must be maintained by the Contractor and be made available to the Department upon request.

23. **LICENSING AND ACCREDITATION STANDARDS** -- Unless exempt from registration by law, the Contractor shall complete registration with the Department of Revenue, and be responsible for payment of all taxes due on payments made under this Contract. WAC 458-20-101.

The Contractor shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, necessary in the performance of this Contract. (See RCW 19.02 for state licensing requirements/definitions.) The Contractor shall provide to the Department all identification codes/numbers that apply to the business as required in the state and federal revenue laws and regulations.

Identifications such as the State Department of Revenue number, federal employee identification number, state certification number of a minority/women-owned business enterprise, and any other applicable registration identification that may exist should be provided. The Contractor shall be responsible for payment of all related licensing, accreditation and other related fees and charges.

24. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY** -- If federal funds are the basis for this Contract, the Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any federal department or agency.

If requested by Washington Military Department, the Contractor shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any

such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.

Further, the Contractor agrees not to enter into any arrangements or Contracts related to this Contract with any party that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any federal department or agency.

In addition, the state debarment laws shall apply: RCW 39.19.090; RCW 39.12.065 (3).

25. **ADVANCE PAYMENTS PROHIBITED** – The Department shall make no payments in advance or in anticipation of services or supplies to be provided under this Contract. Contractor shall not invoice the Department in advance of delivery of such goods or services. RCW 43.88.160; Washington State Constitution, Article VIII, § 5
26. **LOSS OR REDUCTION OF FUNDING** -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Department may immediately terminate the Contract in its sole discretion under the "Termination for Convenience" clause, without the ten (10) day notice requirement. Alternatively, the parties may renegotiate the terms of this Contract under the "CONTRACT MODIFICATIONS" provision to comply with new funding limitations and conditions, although the Department has no obligation to do so.
27. **WAIVER OF DEFAULT** -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by the Director and attached to the original Contract.
28. **CONTRACT MODIFICATIONS** – This Contract contains all the terms and conditions agreed upon by the parties with respect to the subject matter herein, as outlined in quote 338282.2, and supersede all prior negotiations, writings, and representations. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or bind the parties hereto unless made in writing and signed by the parties. The Department and the Contractor may, from time to time, request changes to the Contract. Any such changes that are *mutually agreed upon* by the parties to this Contract shall be incorporated herein by written amendment to this Contract. It is mutually agreed and understood that no alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto, and that any other understanding or agreements, oral or otherwise, are not incorporated herein and shall not be binding unless made in writing and signed by the parties hereto. In the event of any ambiguity or conflict between this Contract and any agreement regarding the subject matter herein, the terms of this Contract shall prevail.
29. **LIMITATION OF AUTHORITY -- "Authorized Signature"** Only the assigned Authorized Signature for the Department or the assigned delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the authorized person.
30. **DISPUTES** -- Except as otherwise provided in this Contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution board to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The board shall consist of a representative appointed by the Department, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The determination of the dispute resolution board shall be final and binding on the parties hereto. Each party shall bear the cost for its member of the dispute resolution board and its attorney fees and costs, and share equally the cost of the third board member.

31. **RECAPTURE OF FUNDS** -- To the extent the Contractor is obligated to expend funds under this Contract in accordance with state laws and/or the provisions of this Contract, the Agency reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such right of recapture shall exist for a period not to exceed six (6) years following Contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. In the event that the Agency is required to institute legal proceedings to enforce the recapture provision, the Agency shall be entitled to its costs thereof, including reasonable attorneys' fees.

32. **CONFLICT OF INTEREST** -- The Department may, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by The Adjutant General or the Authorized Department Representative that there is a violation of Chapter 42.52 RCW, Ethics in Public Service, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

33. **TERMINATION FOR CONVENIENCE** -- Notwithstanding any provisions of this Contract, the Contractor may terminate this Contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Notwithstanding any other provisions of this Contract, the Department may, by ten (10) days written notice, beginning on the second day after the mailing of the written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Department shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Contract, withhold further payments, and prohibit the Contractor from incurring additional obligations of funds.

34. **TERMINATION OR SUSPENSION FOR CAUSE** -- In the event the Department determines the Contractor has failed to comply with the conditions of this Contract in an acceptable and timely manner, the Department has the right to suspend or terminate this Contract. The Department shall notify the Contractor in writing of the need to take corrective action.

If the default or violation is not corrected after ten (10) days or within a reasonable timeframe as determined by the Department, the Contract shall be deemed terminated. The Department reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Department to terminate the Contract.

In the event this Contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of the Department provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which The Adjutant General or the Authorized Department Representative makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default, or (2) failure to perform was outside of the Contractor's control, fault or negligence. The rights and remedies of the Department provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

35. **TERMINATION PROCEDURE** -- Upon termination of this Contract, the Department, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this Contract as has been terminated, as applicable.

The Department shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department, and the amount agreed upon by the

Contractor and the Department for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Department, and (iv) the protection and preservation of property; provided, that if the termination is due to default, The Adjutant General or the Authorized Department Representative shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The Department may withhold from any amounts due the Contractor such sum as The Adjutant General or the Authorized Department Representative determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the Department, the Contractor shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
  - b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
  - c. Assign to the Department, in the manner, at the times, and to the extent directed by The Adjutant General or the Authorized Department Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent The Adjutant General or the Authorized Department Representative may require, which approval or ratification shall be final for all the purposes of this clause;
  - e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Contract had been completed, would have been required to be furnished to the Department;
  - f. Complete performance of such part of the work as shall not have been terminated by the Department; and
  - g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.
36. **GOVERNING LAW AND VENUE** -- This Contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. In the event of a lawsuit involving this Contract, venue shall be proper only in Thurston County. The Contractor, by execution of this Contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.
37. **SEVERABILITY** -- If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.
38. **DATE COMPLIANCE** – If applicable to this Contract, the Contractor is responsible for ensuring that all materials and equipment installed as part of this Contract shall accurately process date/time data between year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.
39. **HISTORICAL AND CULTURAL ARTIFACTS** – If applicable, the Contractor agrees that if historical, archaeological data, or cultural artifacts, relics or specimens are discovered during and

as the result of Contract activities such as construction, the Contractor shall immediately stop those specific activities and notify the local historical preservation officer, the state's historical preservation officer at the Washington State Department of Archeology and Historic Preservation, and the Department's contact person for this Contract.

40. **RESPONSIBILITIES OF THE PARTIES --**

Each party to this Contract hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any negligent act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any negligent claim, act, or omission of any person, agency, firm, or corporation not a part to this Contract, except as outlined in section 8 of this Contract.

41. **EXECUTIVE ORDER 18-03 -WORKERS' RIGHTS**

The Contractor represents and warrants that the 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. The Contractor further represents and warrants that, during the term of this Contract, the 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.

42. **ACCESS TO CAMP MURRAY**

Contractor and all associated sub-contractor's employees shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office. Contractor workforce must comply with all personal identity verification requirements as directed by the Department of Defense (DoD), Department of the Army (DA), National Guard Bureau (NGB) and/or local policy.

In addition to the changes otherwise authorized by the changes clause of this Contract, should the Force Projection Condition (FPCON) at any individual facility of installation change, the WMD may require changes in contractor security matters or processes.

43. **CONTRACTOR TO PAY PREVAILING WAGES OR APPLICABLE FEDERAL WAGES**

Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries (L&I). The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate. If applicable, the Contractor shall comply with all Federal Funding requirements of the Davis Bacon Act.

44. **INSURANCE REQUIREMENTS**

**INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall obtain 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 and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
- b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
- c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's 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. **CYBER RISK LIABILITY INSURANCE.** Cyber risk insurance, on a claim form. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract. Limits are \$1,000,000 per occurrence and \$2,000,000 aggregate.
- e. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than

\$1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can 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.

**INSURANCE CARRIER RATING.** Coverages provided by the 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. WMD reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

**ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability, if applicable, 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.

**CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to WMD as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to WMD that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition and upon written request, Contractor shall furnish to WMD an updated or renewed certificate of insurance once a policy is in effect, satisfactory to WMD, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in Contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be delivered to WMD by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as WMD may specify in writing:

US Mail: Contracts Office  
Attn: Alyssa Pearson  
Washington Military Department  
1 Militia Drive / MS: TA-20  
Camp Murray, WA 98430-5092

Email: [Contracts.Office@mil.wa.gov](mailto:Contracts.Office@mil.wa.gov)  
*Note:* For Email notice, the Email Subject line must state:  
**Contract Insurance Certificate – Contract No. \_\_-\_\_\_\_**

**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.

**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. 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.

**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.

**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) days prior written Legal Notice by Contractor to WMD. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.

**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 Contract.

45. **COMPLIANCE WITH WASHINGTON'S STATEWIDE IT POLICIES:**

Contractor shall comply with Washington's statewide information technology policies, as applicable – promulgated by Washington's Office of the Chief Information Officer (OCIO). Such policies are located on the OCIO website at: <https://ocio.wa.gov/policies>.

Prior to final execution of a contract with a Contractor, the Contractor's application(s) will be subject to a Security Design Review performed by Washington Consolidated Technology Services to ensure compliance with OCIO Security Policies.