

PROGRAM SERVICES AGREEMENT

THIS PROGRAM SERVICES AGREEMENT ("Agreement") is made as of the last date of execution by a party as set forth in the signature block below (the "Effective Date"), by and between the State of Washington Department of Corrections ("Department") and Union Supply Company, Inc., d/b/a Union Supply Group ("Union Supply").

RECITALS

- A. Washington Correctional Industries ("CI") is a unit within the Department's Prisons Division, operating Class II businesses pursuant to RCW 72.09.100; and
- B. CI, provides comprehensive offender work programs, trains offenders in general work habits and work skills, and provides employment opportunities for offenders to increase their employment prospects when released and to offset the public support costs of corrections; and
- C. Union Supply is in the business of designing and operating customized offender direct package programs for correctional facilities nationwide as well as supplying goods, including food and drinks, apparel, personal care, music, electronics, dress-out and religious products, for such package programs and for correctional facility commissaries and canteens; and
- D. The Department now desires to engage Union Supply to provide services in connection with CI's operation of an offender direct quarterly package program serving only inmates in Department facilities. This Program will operate during the first three (3) quarters of the calendar year. The Program is intended to be a Class II business serving inmates in Department facilities, utilizing inmate labor within facilities owned or leased by the Department. Offenders working in this program will provide inventory, fulfillment and delivery operations for the program on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. OFFENDER PACKAGE PROGRAM AND OTHER SERVICES

1.1 Services.

a. The Department hereby grants to Union Supply the exclusive right during the term of this Agreement to provide the material for CI's offender quarterly package program and other services described in this Agreement and to be the exclusive provider of the services set forth in Section 2.2, below. Union Supply will assist CI division in the design, implementation and operation of a customized offender direct package program that delivers packages to inmates in the Department's facilities, utilizing inmate labor within facilities owned or leased by the Department (the "Offender Quarterly Package Program"). The parties acknowledge and agree that this Agreement applies solely to services for the Department and inmates in its facilities. If the CI division determines to provide services to corrections entities other than the

Department, a new agreement for such services will be required.

1.2 Program Design. Union Supply shall work with the Department to customize the Offender Quarterly Package Program for Department facilities as follows:

a. In consultation with the Department, Union Supply shall design and propose to the Department a unique Offender Package Program menu of items offered for sale from the selection of over 7,000 products available through Union Supply. Offender packages may include items from any or all of the following categories: food, drinks and snacks, personal care, miscellaneous goods. All menu items shall be approved for sale by the Department in advance of each item being offered for sale. Union Supply acknowledges and agrees that, at the Department's direction, the menu shall include a selection of inmate property items.

b. In consultation with Union Supply, the Department shall designate the allowed ordering dates for that program. The parties agree that the first program shall occur on or before June 1, 2013.

c. The maximum dollar amount per inmate for a package, as well as any other inmate-specific or other ordering restrictions, shall be subject to the Department's direction and approval in its sole and absolute discretion.

1.3 No General Funds. The parties to this Agreement acknowledge and agree that no Washington State general funds are obligated under this Agreement.

2. SCOPE OF WORK

2.1 General Terms and Conditions. Attachment A to this Agreement contains the General Terms and Conditions governing work to be performed under this Agreement, the nature of the working relationship between the Department and Union Supply, and specific obligations of the parties. If a conflict arises between any provision set forth in the General Terms and Conditions, and any provision set forth in the body of this Agreement, the terms of this Agreement shall prevail.

2.2 Union Supply Scope of Work. Subject to the terms of this Agreement, Union Supply agrees to:

a. Work with the Department to customize the Offender Quarterly Package Program to meet the unique needs of the Department, inmates and their family members;

b. Upon the Department's request and in consultation with the Department, prepare an Offender Job Description, and any other required written materials, pursuant to Department policy DOC 710.400 for the Offender Package Program.

c. Consult with the Department on the design, layout, network/cabling and equipment needs of the warehouse and production space.

- d. Provide computers, scanners and Union Supply's proprietary software to manage product and order restrictions, weight limits, product quantity limits, limits by inmate status, dollar limits and limits by gender, as well as conduct inventory management, bagging and delivery operations.
- e. Train Department staff and inmates in the use of the software and operations processes necessary to efficiently operate the bagging and delivery of inmate packages.
- f. Provide operations manuals and documentation of software and procedural processes.
- g. Deliver bulk commissary products to the Department's designated warehouse in quantities sufficient to complete all package orders.
- h. Provide all customer service operations, including a bi-lingual customer service team, and a dedicated Facility Staff Hotline to exclusively service the Department staff.
- i. Handle all family customer orders, the input and scanning of inmate orders, and provide ordering operations and equipment.
- j. Provide all payment processing operations and payment processing equipment as needed.
- k. Handle customer refunds, returns and credits, in coordination with the Department.
- l. Design and provide all marketing materials including catalogues, order forms, posters and/or additional marketing materials.
- m. Develop, operate and host a website, customized to the Offender Quarterly Package Program, for inmate families to order on-line.
- n. Electronically deliver a summary of all orders to the Department's packaging and delivery fulfillment site.
- o. Provide post-sales data to the Department upon the completion of each periodic program completion.
- p. Consult with the Department staff on all business and operational aspects of the Offender Quarterly Package Program as needed.
- q. Provide other services within the above Union Supply Scope of Work as are reasonable and necessary to operate the Department's Offender Quarterly Package Program profitably and successfully or to otherwise carry out the purposes of this Agreement.

2.3 Department's Obligations. Subject to the terms of this Agreement, the Department agrees through its CI division to:

- a. Provide, at any given time, a sufficient number of inmates and staff supervisor(s) necessary to work in the Offender Quarterly Package Program and fulfill the Department's operational responsibilities, as each periodic program occurs.
- b. Provide warehouse space to receive, store and manage bulk commissary product inventory, and for packaging and distribution operations.
- c. Provide and install racks for the warehouse space to store inventory and provide all associated network/cabling and equipment for inventory receipt, storage and retrieval for packaging.
- d. Provide packaging assembly and fulfillment operations and all associated labor, network/cabling, equipment and supplies.
- e. Provide transportation and delivery of packaged goods to the end user, including without limitation transportation of packaged goods from the fulfillment site to each facility and then to each inmate within each facility.
- f. Issue institution check for offender orders and mail orders and payment to Union Supply.
- g. Provide an electronic portal and information to Union Supply sufficient to enable Union Supply to authenticate customer orders, determine offender eligibility to receive goods, accept order and delivery information, and provide order confirmation and completion acknowledgements, including without limitation providing inmate data files containing inmate identification and eligibility information and shipping location.
- h. Provide an electronic interface to the Department packaging and inventory delivery location that will accept the electronic file download of completed orders for processing by Department personnel.
- i. Coordinate with Union Supply for customer returns and credits.
- j. Electronically submit completed and shipped order information to Union Supply to aid Union Supply Customer Service in answering any end user questions or concerns.
- k. Provide accountability for used and unused inventory.
- l. Distribute, post or otherwise make reasonably available in prison facility inmate living areas and facility lobby and visitation areas the following materials that will periodically be supplied by Union Supply: posters, product catalogues, and order forms for use by inmates, their friends and family members.
- m. Publish Offender Quarterly Package Program information and the most recent catalogues supplied by Union Supply on the DOC website and

support implementation of the Union Supply-designed website, customized to DO, that will allow inmate friends and family members to order online.

n. Provide other services within the above the Department Supply Scope of Work as are reasonable and necessary to operate the Department Offender Quarterly Package Program profitably and successfully or to otherwise carry out the purposes of this Agreement.

3. TERM

The initial term of this Agreement shall be for one year from the Effective Date. Thereafter, the Agreement shall renew automatically for additional periods of one year each until terminated as described in the "Termination" clause, Section 4, below.

4. TERMINATION

4.1 Termination Notice. During the initial term, this Agreement may be terminated by the Department upon ninety (90) days advance written notice to Union Supply if the full implementation of the Offender Quarterly Package Program as described in this Agreement results in a decrease in regular Department commissary sales. After the initial term, this Agreement may be terminated by either party upon ninety (90) days advance written notice delivered to the other party in accordance with the "Notice" clause, Section 11, below. Notwithstanding the foregoing, if the Department, in its reasonable discretion, determines the cause for termination creates an immediate and credible threat to public or offender safety, health or welfare, then the Department may terminate this Agreement upon twenty-four (24) hours advance written notice.

4.2 Rights and Duties Upon Termination. Upon termination of this Agreement for any reason:

a. Union Supply shall have sixty (60) days from the effective date of termination to remove, at its sole cost and expense, all products, packaging materials and ancillary items owned by Union Supply from Department premises, and the Department agrees to cooperate with Union Supply reasonably in the removal of such products, materials and items;

b. Union Supply shall have the first right to purchase any materials, components or products owned by the Department and used exclusively for the fulfillment of this Agreement, if the Department determines to sell or dispose of them after termination of the Agreement.

5. FEES AND EXPENSES

5.1 Union Supply Fee. Union Supply shall receive as its fee for all services provided hereunder the gross revenue generated by the Offender Quarterly Package Program, less the following which it shall pay to the Department:

a. Inmate Labor and Expenses. Union Supply agrees to compensate CI for the CI staff and inmate labor used to provide the Department services set forth in Section 2.3, above, as set forth on Attachment B, attached hereto and incorporated by this reference (the "CI Labor Fees"); provided, however, that neither CI nor the Department shall receive CI Labor Fees for the package transport and delivery services described in Section 2.3.e, above. In addition, Union Supply agrees to reimburse CI for all packaging and shipping materials (such as bags) reasonably purchased by the CI to package and ship goods to inmates under the Offender Quarterly Package Program. The CI shall send monthly invoices to Union Supply for (i) the CI Labor Fees then due and payable for Department services rendered through CI in the preceding month and (ii) the packaging and shipping material expenses incurred by CI in the preceding month. Union Supply shall remit payment for the undisputed amount of each invoice within thirty (30) days from the date of receipt of the invoice.

b. Revenue Share. In addition to the foregoing fees and expense reimbursements, Union Supply shall pay to CI the sum of twenty percent (20%) on the Total Net Sales generated by the Offender Quarterly Package Program. For purposes of this Agreement, "Total Net Sales" means the total revenue actually received and retained by Union Supply under the Offender Quarterly Package Program, exclusive of bad debt, customer returns, credits, and less all sums paid by Union Supply for shipping, taxes, or other similar "pass-through" fees and charges. Union Supply shall send a monthly statement to CI setting forth the current revenue share due to CI, and the revenue share shall be paid monthly by no later than the twentieth day of the month following the month to which the statement pertains.

c. No Other Compensation. Other than the foregoing CI Labor Fees, the expense reimbursement, and the revenue share payments, neither the Department nor CI shall be entitled to receive any other fees or remuneration in connection with this Agreement or the Offender Quarterly Package Program.

5.2 Books and Records. Union Supply shall maintain Offender Quarterly Package Program books and records and communications, sufficient to enable the Department to audit the payments made hereunder, for the term of this Agreement, plus an additional three years after the termination of this Agreement, or for such further period as may be necessary to resolve any matters which may be pending.

6. OTHER PRODUCTS AND SERVICES

6.1 The Department agrees that in the event it determines to alter the CI division's operations or services to include (i) a package program of greater frequency than the Offender Quarterly Package Program, (ii) a package program in the fourth quarter of the year, (iii) a Holiday program, or (iv) any other program involving obligations similar to those set forth in Section 2, then such program(s) shall be

automatically added to this Agreement and all rights and obligations regarding such program(s) shall be governed by the terms of this Agreement.

6.2 The parties furthermore acknowledge and agree that it will be mutually beneficial for the Department and the CI division, utilizing Union Supply's consultation and services, to expand the Offender Quarterly Package Program and include other customers, products, programs and/or services as appropriate, or implement new programs or services. Accordingly, the parties agree that modified, different, or new customers, products, programs and/or services may be added to this Agreement from time to time upon the mutual agreement of the parties. Either party may, at any time, propose a new customer, or new or modified product, program or service, to be added to this Agreement and the other party shall promptly evaluate adding the proposed products, programs or services, reasonably and in good faith.

7. INSURANCE

7.1 At all times during the term of this Agreement, Union Supply and its subcontractors shall provide and maintain in effect the following types, in the minimum amounts, of insurance:

a. Commercial General Liability Insurance: \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

b. Commercial Automobile Liability: Combined Bodily Injury and Property Damage Single Limit: \$1,000,000 combined single limit for each occurrence and \$1,000,000 in the aggregate.

c. Workers' Compensation: Union Supply shall comply with all Workers' Compensation requirements applicable to Union Supply for its employees. The Department shall comply with and be responsible for all Workers' Compensation requirements applicable to Department staff and inmates working in the Offender Quarterly Package Program.

7.2 The insurance coverage set forth in Section 7.1 may, in Union Supply's sole discretion, be provided through primary and excess coverage that, when added together, provide dollar coverage in the total respective coverage amounts set forth above.

8. FORCE MAJEURE

Neither Union Supply nor the Department shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by an event of Force Majeure. As used in this Agreement, "Force Majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; flood; epidemic; quarantine restrictions; strikes or other labor disputes; freight embargoes; riots; or unusually severe weather.

9. WARRANTIES

All parts and components will be warranted by Union Supply in accordance with the Washington Uniform Commercial Code and applicable State and Federal standards for repackaged items marketed and delivered outside of the State of Washington. The Department shall be responsible for all services and workmanship provided by the Department in the repackaging and distribution of products under this Agreement.

10. TRADEMARKS AND PATENTS

During the term of this Agreement, Union Supply hereby grants to the Department a non-exclusive, limited, non-transferable license to use in the Department's performance of this Agreement any and all intellectual property, including copyrights, patents and patents pending registered with the United States and owned by Union Supply, that are utilized in the packaging or distribution services provided by the Department under this Agreement.

11. NOTICES

Any notice required to be given under this Agreement shall be in writing and served by personal delivery, by nationally recognized overnight courier for next day delivery, or by United States Mail, return receipt requested, to the address for the receiving party set forth below, until such time as written notice of change of address is delivered by one party to the other in accordance with this Section 11. Any notice mailed, served, or personally delivered pursuant to this Section 11 shall be deemed delivered and effective upon receipt.

IF TO THE DEPARTMENT:

Lyle Morse
Correctional Industries Director
Washington Department of Corrections
801 88th Ave SE
Tumwater, Washington 98501

IF TO UNION SUPPLY:

Tom Thomas
President and CEO
Union Supply Company, Inc.
2301 East Pacifica Place
Rancho Dominguez, CA 90220

12. GENERAL PROVISIONS

12.1 Indemnification. Each party shall indemnify, save, and hold harmless the other party against any and all claims, damages, liability and court awards including costs, expenses, and reasonable attorney fees incurred as a result of any intentional wrongful act or gross negligence of that party, or its employees, agents, or assignees pursuant to the terms of this Agreement.

12.2 Intellectual Property Indemnity. Union Supply shall pay all applicable royalties and license fees for any intellectual property utilized in the performance of this Contract. Union Supply, at its expense, will defend the State against any third party claim, threat, action, suit, or other proceeding, to the extent the same alleges infringement of any patent, trademark, or copyright or misappropriation of a trade secret, arising from any intellectual property received from Union Supply (an "Infringement Claim"). Union Supply will indemnify the State for damages finally awarded against the State in, or agreed to by Union Supply in settlement of, an Infringement Claim. Union Supply shall have the exclusive right to defend or settle any such Infringement Claim. Union Supply's obligation to defend and indemnify the State against any Infringement Claim is contingent upon the State's providing Union Supply: (1) timely written notice of such Infringement Claim, provided that the failure of the State to provide timely notice shall not modify Union Supply's obligations under this paragraph except to the extent that Union Supply is materially prejudiced thereby; and (2) at Union Supply's reasonable expense, all reasonable information and assistance requested by Union Supply to settle or defend such Infringement Claim.

12.3 Integration. The parties acknowledge that no other person or entity has made any promise, representation or warranty whatsoever, express, implied or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Agreement, and each signatory hereby acknowledges that it has not executed this Agreement in reliance upon any such promise, representation or warranty. This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements between the Parties, either written or oral on the subject hereof.

12.4 Amendment. No subsequent novation, renewal, addition, or other amendment to this Agreement shall have any force or effect unless embodied in a written agreement which is signed by all parties.

12.5 Legal Authority. Each party assures and guarantees the other party that it possesses the legal authority to enter into this Agreement. The person or persons executing this Agreement on behalf of each party does hereby warrant and guarantee that they have full authorization to execute this Agreement.

12.6 Compliance with Applicable Laws. Each party shall, at all times during this Agreement, strictly adhere to all applicable state and federal laws and regulations, including without limitation laws respecting discrimination and unfair employment practices, and laws pertaining to the protection of the confidentiality of all records, papers, documents, tapes, or any other materials that have been or may hereafter be established which relate to this Agreement.

12.7 Severability. To the extent that this Agreement may be executed and performance of the obligation of the parties may be accomplished within the reasonable intent of the Agreement, the terms of this Agreement are severable, and should they be held invalid for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term or the same term upon subsequent breach.

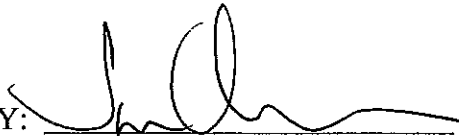
12.8 No Third Party Benefit. This Agreement shall benefit and burden the parties hereto in accordance with its terms and conditions and is not intended, and shall not be deemed or construed, to confer any rights, powers, benefits, or privileges on any person or entity other than the parties to this Agreement. This Agreement is not intended to create any rights, liberty interests, on behalf of any Department inmate or offender, or on behalf of any other third party.

12.9 Jurisdiction. The laws of the State of Washington and rules and regulations issued pursuant thereto shall be applied in any action arising from this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.


“UNION SUPPLY”

Union Supply Company, Inc. d/b/a
Union Supply Group

BY: 
NAME: Tom Thomas
TITLE: President and CEO
DATE: 1-22-13

“DEPARTMENT”

State of Washington
Department of Corrections

BY: 
NAME: Gary Banning
TITLE: Contracts Administrator
DATE: 1/21/13

Washington Correctional Industries,
A Unit of the Department of Corrections

BY: _____
NAME: _____
TITLE: _____
DATE: _____

ATTACHMENT A

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS. As used throughout this Contract, the following terms shall have the meanings set forth below:

- 1.1 "Contractor" shall mean the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. "Contractor" shall also include any Subcontractor retained by the Contractor as permitted under the terms of this Contract.
- 1.2 "Secretary" shall mean the Secretary of the Department of Corrections and designees authorized to act on the Secretary's behalf.
- 1.3 "Department" shall mean the Department of Corrections (DOC) of the state of Washington, any division, section, office, unit or other sub-division of the Department, or any of the officers or other officials lawfully representing the Department.
- 1.4 "Subcontractor" shall mean one not in the employment of the Contractor who, under a separate contract with the Contractor, is performing all or part of the services under this Contract. Contractor shall remain responsible to the Department for any work required under the terms of this contract that is performed by a subcontractor under separate contract to Contractor.
- 1.5 "Contracts Administrator" shall mean the Administrator of Contracts and Legal Affairs or designee.
- 1.6 "Contracts and Legal Affairs" shall mean the Department of Corrections (DOC) headquarters contracting office, or successor section or office.

2. ACCESS TO DATA.

In compliance with RCW 39.29.080, the Contractor shall, at no additional cost, provide access to data generated under this Contract to the Department, the Washington State Joint Legislative Audit and Review Committee, and the Washington State Auditor. 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.

3. AMERICANS WITH DISABILITIES ACT (ADA).

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 telecommunications. (See Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28CFR Part 35.)

4. ADVANCE PAYMENTS PROHIBITED.

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Department.

5. AMENDMENTS AND MODIFICATIONS.

- 5.1 Amendments and modifications to this contract shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
- 5.2 Changes in the rate of compensation must be signed by both parties and shall not be effective until the first day of the month following the last date of signature of the amendment or until the effective date of the amendment if later than the date of last signature.
- 5.3 The Secretary may, at any time, by written notification to the Contractor, and without notice to any guarantor or surety, unilaterally amend the scope of work to be performed under the Contract, the period of performance, or the compensation to be paid to the Contractor. These unilateral changes shall be effective as set forth in the amendment or upon signature by the Contracts Administrator, if no date has been set forth.

- 5.4 The Contractor will be deemed to have accepted any such unilateral amendment unless, within fifteen (15) calendar days after the date the amendment is signed by the Contracts Administrator, the Contractor notifies the Contract Manager, in writing, of its non-acceptance of such unilateral change. The Contractor and the Department will then use good faith efforts to negotiate an amendment acceptable to both parties.
- 5.5 Failure to reach agreement shall constitute a dispute concerning a question of fact within the meaning of the Disputes provision contained in this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as amended. Contractor must continue to provide the contracted services, including any unilaterally amended services, during any period of non-acceptance or negotiation of a unilateral amendment.

6. ASSIGNMENT.

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor without prior written consent of the Department.

7. ATTORNEYS' FEES.

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

"Confidential Information" as used in this section includes:

- A. All material provided to the Contractor by the Department that is designated as "confidential" by the Department;
- B. All material produced by the Contractor that is designated as "confidential" by the Department; and
- C. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Department or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Department with its policies and procedures on confidentiality. The Department may require changes to such policies and procedures as they apply to this Contract whenever the Department reasonably determines that changes are necessary to prevent authorized disclosures. The Contractor shall make the changes within the time period specified by the Department. Upon request, the Contractor shall immediately return to the Department any Confidential Information that the Department reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

9. CONFLICT OF INTEREST/ETHICS.

- A. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Department may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by the Contracts Administrator that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of or performance under this Contract.
- B. 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 inclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Contracts Administrator makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

10. CONSTRUCTION.

Nothing in this Contract shall be construed to create a right enforceable by or in favor of any third party.

11. COPYRIGHT PROVISIONS.

Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Department. The Department shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Department effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to the Department a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Department.

The Contractor shall use all reasonable effort to advise the Department, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.

The Department shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

12. 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 agents 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 recover by other means the full amount of such commission, percentage, brokerage, or contingent fee. The provisions of this section shall survive any termination or the expiration of this Contract.

13. DISPUTES.

Except as otherwise provided in the Contract should a dispute arise between the parties hereto, with respect to the terms of this contract or the performance thereof, and it cannot be resolved informally, the parties shall refer the dispute to an independent arbitrator selected by mutual agreement of the Contractor and the Department. The arbitrator so chosen shall establish procedures for an arbitration hearing and shall render a decision resolving the dispute. The arbitrator's decision shall be binding on both parties. The arbitrator's fee will be shared equally by the parties, but neither party shall be financially responsible for the costs incurred by the other party in connection with the arbitration.

14. DISALLOWED CHARGES/DUPLICATE CHARGES/OVERPAYMENT REFUNDS.

The Contractor is not allowed to charge the Department for a Medicaid service. If the Department has erroneously paid for a Medicaid service charged by the Contractor, that payment is considered an overpayment and shall be deducted from the Contractor's future payments by the Department.

The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of the cost charged to other entities for the same service(s) nor are they a duplicate payment. If the charges are determined to be in excess of those costs charged to other entities or a duplicate charge, the Department is entitled to an overpayment refund for the excess or duplicate charges.

15. ENTIRE AGREEMENT.

This Contract, all attachments, and future amendments hereto, constitute the entire agreement between the Contractor and the Department and no other statements or representations, written or oral, shall be deemed a part hereof.

16. FEDERAL IMMIGRATION REFORM AND CONTROL ACT (IRCA).

During the performance of this Contract, the Contractor shall comply with all requirements of the federal Immigration Reform and Control Act (IRCA) and any regulations adopted by the Department of Justice Bureau of Immigration and Naturalization Services to implement the IRCA. The provisions of this paragraph shall be in addition to any other requirements set forth in the text of the Contract

17. GOVERNING LAW.

This contract shall be construed and interpreted according to the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

18. HEALTH and SAFETY.

18.1 Health. The Contractor shall ensure that all of its personnel assigned to DOC sites is trained in the requirements of Chapter 296-823 WAC, blood borne pathogens. Further, the Contractor shall provide all such personnel with protections from blood borne and other body fluid diseases that meet or exceed the WAC standards for such protection. If the Contractor is a health care provider whose duties include the medical or physical care of inmates or emergency or medical treatment of employees, the Contractor shall abide by the requirements of Chapter 296-823 WAC as well as standard medical practice.

18.2 Safety. For all work performed under this Contract, the Contractor agrees to comply with Department policies and procedures relative to custody of inmates and security/operation of the institution such as, but not limited to, fingerprinting, photographs for identification purposes, and searches.

19. INDEMNIFICATION.

19.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

19.2 Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

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

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

19.5 The provisions of this paragraph shall not apply to any act or omission by the Contractor for which the Department, in the text of this Contract, has agreed to defend and hold the Contractor harmless. The provisions of this section shall survive any termination or the expiration of this Contract.

20. INDEPENDENT CONTRACTOR STATUS.

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor will not hold himself or herself out as nor claim to be an officer or employee of Washington State in the performance of this Contract. Conduct and control of the work required under this contract is solely with the Independent Contractor.

21. INDUSTRIAL INSURANCE COVERAGE.

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. The Department will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any Sub-contractor, or employee of the Contractor, which might arise under these industrial insurance laws during performance of duties and services under this Contract.

22. LICENSING AND ACCREDITATION STANDARDS.

The Contractor shall comply with all applicable local, state and federal licensing and accrediting standards, required by law and necessary in the performance of this Contract.

23. LIMITATION OF CONTRACTING AUTHORITY.

Only the Secretary, Secretary's designee, or Contracts Administrator 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 Secretary, Secretary's designee, or Contracts Administrator.

24. MAINTENANCE OF RECORDS.

24.1 During the term of this Contract and for six (6) years following its termination or expiration, the Contractor shall maintain, and provide DOC or its designee, at no additional cost, with reasonable access to Contractor's records sufficient to:

- i. Document performance of all services required by this Contract; and
- ii. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, performance and principals; and
- iii. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document the Contractor's invoices to DOC and all expenditures made by the Contractor to perform as required by this Contract.

24.2 If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

24.3 Should an audit, conducted under the authority of this section, disclose that the Contractor has been paid by the Department in excess of the agreed upon costs (overpayment), or has been reimbursed by the Department for direct or indirect costs which are disallowed as a result of that audit, then, the Contractor shall, upon demand by the Department, repay such overpayment or reimbursement to the Department without requiring further legal action by the Department.

24.4 The provisions of this section shall survive termination or expiration of this Contract.

25. RECAPTURE OF FUNDS

In the event that the Contractor fails to perform this contract in accordance with state laws and/or the provisions of this contract, the Department reserves the right to recapture funds in an amount to compensate the Department for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Department. In the alternative, the Department may recapture such funds from payments due under this contract.

Such right of recapture shall exist for a period not to exceed six years following contract termination. In the event that the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorneys' fees.

26. RETIREMENT BENEFIT SUSPENSION – PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

The Contractor certifies by signing this Contract that that the Contractor is not a Public Employee Retirement System (PERS) retiree who retired early under the Public Employees Retirement System (PERS) RCW 41.40.630(3); and if it is found that the Contractor did retire early under the PERS, the Contractor's retirement benefits may be suspended for the duration of this Contract.

Further, if the Contractor was a PERS retiree, the Contractor agrees to notify the Department of Retirement

Systems (DRS), regarding the execution of this Contract, failure to do so is considered a material breach and may subject the Contractor to damages. In addition, the Contractor certifies that the Contractor does not have a beneficial interest in this Contract as defined in the Executive Ethics Board's Advisory Opinion 97-07).

27. NONDISCRIMINATION.

26.1 During the performance of this contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies.

26.2 In the event of the Contractor's non-compliance 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 may be given a reasonable time in which to cure this noncompliance. Any dispute shall be resolved in accordance with the "Disputes" procedure set forth herein.

28. 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.

29. REGISTRATION WITH DEPARTMENT OF REVENUE.

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

30. RIGHT OF INSPECTION.

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Department, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

31. RIGHTS AND REMEDIES.

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

32. SAFEGUARDING OF OFFENDER INFORMATION.

32.1 The Contractor may use offender information gained by reason of this Contract only to perform work under the terms of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law, or with the prior written consent of the Department, offender, or offender personal representative.

32.2 The Contractor agrees to abide by all present and future federal and state laws and regulations in maintaining the confidentiality of Department files and records, including Criminal History Record Information (CHRI). In the event CHRI is provided to the Contractor, the Contractor shall also abide by all present and future Department rules and regulations governing the use of CHRI.

32.3 The provisions of this section shall survive any termination or expiration of this Contract.

33. SEVERABILITY.

The terms and conditions of this Contract are severable. If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this Contract.

34. SITE SECURITY.

While on Department premises, Contractor, its agents, employees, or subcontractors shall conform in all respects to site security requirements relative to custody of offenders and security operations, including but not limited to, background check, fingerprinting, photographs for identification, physical safety, fire, and security policies or regulations.

35. SUBCONTRACTING.

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval of the Contracts Administrator. If the Department approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Department in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

In no event shall the existence of any 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. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

36. TAXES.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Contractor or the Contractor's staff shall be the sole responsibility of the Contractor.

37. TERMINATION.

37.1 BY CONTRACTOR. The Contractor may terminate this Contract by giving the Department written notice of such termination. No such termination shall be effective until sixty (60) days after the Department has received the Contractor's written notice of termination, or until such later date as established by the Contractor in the Contractor's written notice of termination. Contractor shall mail or deliver the Contractor's written notice of termination to the Contracts Administrator. If the Contractor terminates the Contract, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

37.2 BY DEPARTMENT FOR CAUSE. The Secretary may, by written notice, terminate this Contract in whole or in part, for failure of the Contractor to perform any of the Contract provisions. In such event, the Contractor shall be liable for 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, i.e., cost of the competitive bidding, mailing, advertising, and staff time. If it is determined for any reason that the Contractor was not in default or that the default was beyond Contractor's or Sub-contractor's control, fault or negligence, then the Termination for Default shall convert to Termination for Convenience.

In the alternative, the Department upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Department may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Department to terminate the Contract.

37.3 BY DEPARTMENT FOR CONVENIENCE. The Secretary or designee may terminate this Contract, in whole or in part, when it is in the best interests of the Department. The Department shall give the Contractor written notice of termination at least five days in advance of the effective termination date. When a contract is terminated for convenience, the Department shall only pay, in accordance with the terms of this Contract, for services rendered prior to the effective date of termination.

37.4 BY DEPARTMENT FOR NON-AVAILABILITY OF FUNDS. If the funds the Department relied upon to establish this Contract are withdrawn or reduced, or if new or modified conditions are placed on such funds, the Secretary may terminate this Contract immediately. If this Contract is so terminated, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

38. TERMINATION PROCEDURES

Upon termination of this contract 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 that are accepted by the Department, and

(iv) the protection and preservation of property, unless the termination is for default, in which case the Contracts Administrator 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 Contracts Administrator determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this "Termination Procedures" provision 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 Notice, 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 that is not terminated;
- C. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, 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 Department 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 direct, 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.

39. TREATMENT OF PROPERTY.

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. In all such cases, this "Treatment of Property" provision shall apply.

- 39.1 Title to all property furnished by the Department shall remain in the Department. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Department upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Department upon i) issuance for use of such property in the performance of this Contract, or ii) commencement of use of such property in the performance of this Contract, or iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
- 39.2 Any property of the Department furnished to the Contractor shall, unless otherwise provided herein or approved by the Department, be used only for the performance of this Contract.
- 39.3 The Contractor shall be responsible for any loss or damage to Department property that results from the negligence of the Contractor or the failure of the Contractor to maintain and administer that property in accordance with sound management practices.
- 39.4 If any Department property is lost, destroyed or damaged, the Contractor shall immediately notify the Department and shall take all reasonable steps to protect the property from further damage.
- 39.5 The Contractor shall surrender all Department property to the Department prior to settlement upon completion, termination, or cancellation of this Contract.
- 39.6 All equipment purchased by the Contractor for the Contractor's use under the terms of this Contract, that as

defined in this Contract provision, is actually owned by the Department, shall be shipped or delivered to the institution/location designated by the Contract Manager for tagging and entry into the DOC Capital Asset Management System (CAMS) before distribution to the Contractor for use.

40. UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.

During the performance of this Contract, the Contractor shall comply with Chapter 39.19 RCW, as now existing or hereafter amended, any rule adopted under Chapter 39.19 by OMWBE and/or any policy or regulation adopted by the Department to effect agency compliance with Chapter 39.19 RCW.

If the Contractor fails to comply with any contract requirements relative to the utilization of minority and/or women-owned businesses, the Department may take any or all such actions available to the Department under Chapter 39.19 RCW.

If the Contractor prevents or interferes with any Subcontractor's compliance with Chapter 39.19 RCW, or submits false or fraudulent information to the Department regarding compliance, the Contractor shall be subject to a fine not to exceed One Thousand Dollars (\$1,000) in addition to any other penalties or sanctions prescribed by law.

41. WAIVER.

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the Department.

ATTACHMENT B

CI LABOR FEES

The Department, through its CI unit, will provide 1 staff member for every 15 offenders assigned to work in the Offender Package Program operation, on the following fee schedule:

\$45 per hour

FIRST AMENDMENT TO PROGRAM SERVICES AGREEMENT

THIS FIRST AMENDMENT TO PROGRAM SERVICES AGREEMENT ("First Amendment") is made as of the last date of execution by a party as set forth in the signature block below (the "Effective Date"), by and between the State of Washington Department of Corrections ("Department") and Union Supply Group, Inc. (formerly known as Union Supply Company, Inc.) ("Union Supply").

RECITALS

A. The Department and Union Supply previously entered into a Program Services Agreement dated January 22, 2013 (the "Agreement"); and

B. The Department and Union Supply now desire to amend the Agreement to add new programs and services pursuant to Section 6 of the Agreement, on the terms and conditions set forth the below.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. DEFINITIONS

Capitalized terms herein shall have the same meaning as the capitalized terms in the Agreement unless otherwise defined herein.

2. FOURTH QUARTER PACKAGE PROGRAM

The parties agree that, commencing with the fourth quarter of 2017 and continuing thereafter for the Term of the Agreement, the Department and Union Supply shall add a fourth quarter program to the Quarterly Package Program. The fourth quarter program will operate under the same terms and conditions as the other quarterly programs under the Quarterly Package Program but also may include holiday items on the menu.

3. MONTHLY PROPERTY PROGRAM

The parties agree that, commencing on January 1, 2017, and continuing monthly thereafter for the duration of the Agreement, CI and Union Supply shall operate a monthly property program (the "Monthly Property Program") whereby inmate friends and family members may order property items including, without limitation, televisions, electronics and shoes, for delivery to offenders in the Department's facilities. The Monthly Property Program shall operate under the same terms and conditions as the Quarterly Package Program including, without limitation, the parties' respective responsibilities set forth in Section 2 of the Agreement.

4. AMENDMENT TO AGREEMENT SECTION 1.1.a.

The parties agree that the first two sentences of Section 1.1.a. of the Agreement are stricken in their entirety and replaced with the following:

"a. The Department hereby grants to Union Supply the exclusive right during the term of this Agreement to provide the material for CI's Quarterly Package Program, the Monthly Property Program, the Kit Assembly Program (if implemented at a future date) and other services described in this Agreement and to be the exclusive provider of the services set forth in Sections 2.2 and 2.4.b, below. Union Supply will assist CI in the design, implementation and operation of a customized offender direct package program that delivers quarterly food packages to inmates in the Department's facilities (the "Quarterly Package Program") and monthly property packages (the "Monthly Property Program"), utilizing inmate labor within facilities owned or leased by the Department. Union Supply may further assist CI in the future design, implementation and operation of a kit assembly and product service program (the "Kit Assembly Program") that serves inmates in Department facilities, utilizing inmate labor within facilities owned or leased by the Department, and using kits supplied and processes developed by Union Supply."

5. AMENDMENT TO AGREEMENT SECTION 2.2

The parties agree that Section 2.2 of the agreement shall be amended to include the following subsection:

"2.2.r. Union Supply shall not charge the Department any fees or expenses such as, but not limited to, infrastructure requirements, equipment and supplies necessary for program implementation, shipping and handling, transportation, processing, or other costs, fees, and expenses associated with ongoing program operations.

6. KIT ASSEMBLY PROGRAM

The parties agree that the Agreement shall be amended to include the following section:

"2.4 KIT ASSEMBLY PROGRAM.

a. Kit Program Design. Union Supply may work with CI at a future date to design, implement, and operate a Kit Assembly Program as follows:

i. In consultation with CI, Union Supply may design a Kit Assembly Program for the future production of televisions and other electronic products from kits of component parts. The proposed program may also provide for CI inmates to perform the Warranty and Out of Warranty Service work for such products.

ii. Union Supply may supply kits of various electronic products to the Department for future assembly by CI inmate work crews.

iii. Union Supply may sell the assembled electronic products to Department inmates through the Monthly Property Program.

iv. CI offenders may perform the Warranty and Out of Warranty service work on the assembled electronic products.

v. The items to be produced, sold and serviced as part of the Kit Assembly Program may include, without limitation, televisions of different sizes (15" or 19"), radios, lamps, fans, coffee makers, headphones and any other items agreed to between the parties and approved for future sale by the Department in advance of each item being manufactured.

vi. The Kit Assembly Program may be implemented on or before May 1, 2017, or as soon as practicable, and will begin with 15" televisions.

b. Supply of Kits. Union Supply may supply CI with kits of component parts for the future assembly of electronic products during the term of this Agreement. Finished kits may be transferred to the Union Supply Property Program inventory for fulfillment of orders.

i. Prices shall be quoted and payable in United States Dollars.

ii. Kits may be for televisions of different sizes (15" or 19"), radios, lamps, fans, coffee makers, headphones and any other items agreed to between the parties and approved for future sale by the Department in advance of each item being manufactured.

iii. If the program is implemented, all component parts within a kit, and the properly assembled product, shall be suitable for use by inmates in the corrections environment.

c. Union Supply Kit Assembly Scope of Work. Subject to the terms of this Agreement and future program implementation, Union Supply agrees to:

i. Sell and ship electronic product kits to the Department for assembly into finished goods by inmates working in the Kit Assembly Program.

ii. Provide training for the inmates and staff assigned to the Kit Assembly Program.

iii. Provide to CI all tools, supplies or other accessories required for the assembly/shipping/repair process, retaining ownership of all tools, supplies and other accessories.

iv. At no cost to CI or the Department, supply the necessary component parts (as utilized in the assembly for each product) as replacement/repair parts for Warranty and Out of Warranty work on the finished

goods, retaining ownership of the parts unless and until they are incorporated into a repaired product.

v. Work with CI and the Department to customize the Kit Assembly Program to meet the unique needs of the Department.

vi. Provide other services within the above Scope of Work as are reasonable and necessary to operate the Kit Assembly Program profitably and successfully as reasonably practicable.

d. Department Kit Assembly Scope of Work. Subject to the terms of this Agreement and future program implementation, the Department agrees through its CI division to:

i. Provide, at any one time, a sufficient number of inmates and supervisory staff to work in the Kit Assembly Program as are required to complete all work in a good, timely and commercially reasonable manner. The Department shall use its best efforts to provide inmates whose background and education indicates that they will be successful in providing the services required for the Kit Assembly Program.

ii. Provide sufficient warehouse space, together with associated utilities and network, to receive, store and manage the inventory of kits and finished units, and for the associated assembly, packaging and distribution operations.

iii. Assemble the finished units from kits of component parts supplied by Union Supply, including but not limited to completing the quality control checklist specified by Union Supply for each finished unit.

iv. Notify Union Supply at least weekly of the number of kits used and the number of finished units assembled and transferred to finished goods inventory.

v. Provide transportation of all purchased units from the assembly and final packaging site to Property Program Warehouse.

viii. Backhaul units requiring Warranty Service or Out of Warranty Service from Department facilities to the CI Kit Assembly site for service as needed.

ix. Receive units requiring Warranty Service or Out of Warranty Service and accompanying forms.

x. Verify that each unit is eligible for Warranty Service or Out of Warranty Service using forms and/or other criteria as may be determined by Union Supply from time to time and/or the terms of the applicable Warranty.

xi. Return all items that do not qualify for Warranty Service or Out of Warranty Service to the offender.

xii. Provided that a unit qualifies for either Warranty Service or Out of Warranty Service, perform such warranty repair with the parts provided by Union Supply.

xiii. Complete necessary repair ticket data and retain repair records for each unit.

xiv. Package up the repaired units, along with a copy of the repair ticket and ship it to the appropriate prison facility, addressed to the inmate with the inmate's facility location.

xv. Provide to Union Supply monthly reports listing the number of each part type used in Warranty Service and the number of each part type used in Out of Warranty Service.

xvi. Provide accountability for inventory, including unused kits, unused parts and assembled units.

xvii. Provide other services within the above Scope of Work as are reasonable and necessary to operate the Kit Assembly Program profitably and successfully as reasonably practicable."

7. AMENDMENT TO AGREEMENT SECTION 5

The parties agree that Section 5.1.a. shall be stricken in its entirety and replaced with the following:

"a. Revenue Share. Union Supply shall pay to CI the sum of fifteen percent (15%) on the Total Net Sales generated by the Quarterly Package Program and Monthly Property Program. For purposes of this Agreement, "Total Net Sales" means the total revenue actually received and retained by Union Supply under the Quarterly Package Program and Monthly Property Program, exclusive of religious items, bad debt, customer returns, and credits. Union Supply shall send a monthly statement to the Department setting forth the current revenue share due to the Department, and the revenue share shall be paid monthly by no later than the twentieth day of the month following the month to which the statement pertains."

The parties agree that Section 5.1.b. shall be stricken in its entirety and replaced with the following:

"b. Minimum Allowance Guarantee (MAG). In the event fifteen percent (15%) of the Total Net Sales does not exceed CI's actual program costs per year under this Agreement, Union Supply will guarantee CI sufficient commissions per fiscal year in Revenue Share to cover all program expenses. In June of each year, CI will provide Union Supply with forecasted Quarterly

Package Program and Monthly Property Program expenses for the subsequent fiscal year that begins July 1. In October of each year, CI will provide Union Supply with actual Quarterly Package Program and Monthly Property Program expenses for the preceding fiscal year. This data will be used to calculate MAG on a yearly basis and the amount of revenue share between actual and MAG will be remitted to CI by the twentieth day of November following the close of year end. MAG changes may be negotiated based on, but not limited to, changes in program regulations or requirements, fluctuations in annual program expenses, and/or changes in offender populations."

The parties agree that Section 5.1.c. shall be stricken in its entirety and replaced with the following:

"c. Union Supply shall not charge the Purchaser any fees such as, but not limited to, shipping and handling, transportation, processing, or other fees except for a \$15.00 transfer fee that is assessed for each purchase of a television, radio, or typewriter. This fee will be assessed to the Purchaser at the time of purchase and remitted to CI by the twentieth day of the month following the month in which the fee was collected."

The parties agree that Section 5.2 shall be amended to state as follows:

"5.2 Books and Records. Union Supply shall maintain books, records and communications, sufficient to enable the Department to audit payments made hereunder, for the term of the Agreement plus an additional three years after the termination of this Agreement, or for such further period as may be necessary to resolve any matters which may be pending about which Union Supply has been notified pursuant to the terms of this Agreement."

8. AMENDMENT TO AGREEMENT SECTIONS 1-7

The parties agree that all references to "Offender Package Program," "Offender Quarterly Package Program," and "Quarterly Package Program" in sections 1-7 shall be replaced with "Quarterly Package Program and Monthly Property Program."

9. NO OTHER CHANGES

Except as set forth in this Amendment, all other terms and conditions of the Agreement are unchanged and remain in full force and effect.

[Remainder of page intentionally left blank. Signature appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.


“UNION SUPPLY”

“DEPARTMENT”

Union Supply Group, Inc.

State of Washington
Department of Corrections

BY: 
NAME: LD Hay
TITLE: Executive Vice President
DATE: 12/14/16

BY: 
NAME: John R. Nispel
TITLE: Contracts Administrator
DATE: 12/15/16

SECOND AMENDMENT TO PROGRAM SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROGRAM SERVICES AGREEMENT ("Second Amendment") is made effective as of July 1, 2019 (the "Effective Date"), by and between the Washington State Department of Corrections ("Department") and Union Supply Group, Inc. (formerly known as Union Supply Company, Inc.) ("Union Supply").

RECITALS

A. The Department and Union Supply previously entered into a Program Services Agreement dated January 22, 2013; as amended by that First Amendment to Program Services Agreement dated December 15, 2016 (collectively, the "Agreement"); and

B. The Department and Union Supply now desire to amend the Agreement to ensure that the total annual revenue share to Washington Correctional Industries ("CI") from the Quarterly Package Program and Monthly Property Program are sufficient to cover CI's total annual direct and indirect program expenses.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. DEFINITIONS

Capitalized terms herein shall have the same meaning as the capitalized terms in the Agreement unless otherwise defined herein.

2. AMENDMENT TO AGREEMENT SECTION 5

The parties agree that Section 5.1.a. shall be stricken in its entirety and replaced with the following:

"a. Revenue Share. Union Supply shall pay to CI the sum of eighteen percent (18%) of the Total Net Sales generated by the Quarterly Package Program, and twenty-six (26%) of the Total Net Sales generated by the Monthly Property Program. For purposes of this Agreement, "Total Net Sales" means the total revenue actually received and retained by Union Supply under the Quarterly Package Program and Monthly Property Program, exclusive of religious items, bad debt, customer returns, and credits. Union Supply shall send a monthly statement to CI setting forth the current revenue share due to CI, and the revenue share shall be paid monthly by no later than the twentieth day of the month following the month to which the statement pertains."

The parties agree that Section 5.1.b. shall be stricken in its entirety and replaced with the following:

"b. Minimum Allowance Guarantee (MAG). In the event the revenue share to CI for the Quarterly Package Program and Monthly Property Program do not exceed CI's actual program costs attributable to each program under this Agreement, Union Supply will guarantee CI sufficient commissions per fiscal year in revenue share to cover all program expenses. In June of each year, CI will provide Union Supply with forecasted Quarterly Package Program and Monthly Property Program expenses for the subsequent fiscal year that begins July 1. In July of each year, CI will provide Union Supply with actual Quarterly Package Program and Monthly Property

Program expenses for the preceding fiscal year. This data will be used to calculate MAG on a yearly basis and the amount of revenue share between actual and MAG will be remitted to CI by the twentieth day of August following the close of year end. MAG changes may be negotiated based on, but not limited to, changes in program regulations or requirements, fluctuations in annual program expenses, and/or changes in offender populations."

9. NO OTHER CHANGES

Except as set forth in this Second Amendment, all other terms and conditions of the Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Agreement as of the Effective Date.

Union Supply Group/ Inc.

State of Washington Department of Corrections

BY: _____

NAME: LD Hay

TITLE: Executive Vice President

DATE: _____

6/28/19

BY: _____

NAME Debra Eisen

TITLE: Contracts Administrator

DATE: _____

7/1/19