

STATE OF OREGON
INFORMATION TECHNOLOGY SERVICES AGREEMENT
(Software as a Service)

This Information Technology Services Agreement (this “Contract”) is entered into by and between the State of Oregon acting by and through its _____ (“Agency”), and _____, an _____ corporation (“Contractor”) and is effective as of the Effective Date (defined below).

RECITALS

- A. Agency desires to engage a Contractor to provide [insert short services description here] (the “Services” as defined below) to enable Agency to achieve specific business and Agency mission objectives defined in this Contract, including implementation and testing of the System (as defined below). To that end, Agency issued RFP # _____.
- B. Contractor is the successful proposer to the RFP and Agency desires Contractor to perform the Services.
- C. Contractor desires to perform the Services for Agency.

AGREEMENT

In consideration of the foregoing recitals and the mutual terms and conditions set forth below, Agency and Contractor agree as follows:

1. DEFINITIONS.

“Acceptance” means written confirmation by Agency that Contractor has completed a Deliverable according to the Acceptance Criteria and accepted for purposes of interim payment. The term is distinct from “Final Acceptance.”

“Acceptance Criteria” means the criteria for accepting Deliverables required by this Contract, including but not limited to all specifications and requirements in the Statement of Work, and the Performance Warranties set forth in Section 11.2.

“Acceptance Tests” means those tests which are intended to determine compliance of Deliverables with the Acceptance Criteria of this Contract.

“Accepted” means written confirmation by Agency that Contractor has completed a Deliverable according to the Acceptance Criteria and it is accepted for purposes of interim payment.

“Agency Data” means information created and stored by Agency through the Application Services, and information created and collected by Contractor during the course of providing the Services.

“Agency Intellectual Property” means any intellectual property that is owned by Agency. Agency Intellectual Property includes any derivative works and compilations of any Agency Intellectual Property.

“Agency Project Manager” means the person representing Agency who serves as Contractor’s primary point of contact for the Project.

“Application Services” means Software provided as a service by Contractor to Agency as set forth in the Statement of Work.

“Authorized Representative” means a person representing a party to this Contract who is authorized to make commitments and decisions on behalf of the party regarding the performance of this Contract. Contractor’s Authorized Representative is the person so identified in Exhibit F. Agency’s Authorized Representative is the person so identified in Exhibit G.

“Business Days” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding State of Oregon holidays and business closure days.

“Calendar Days” mean contiguous days.

“Change Order” means a form of Contract amendment pursuant to Section 7 that makes changes or modifications to the Statement of Work within the Scope of this Contract.

“Confidential Information” is defined in Section 9.1.

“Contract” means all terms and conditions herein and all Exhibits attached hereto.

“Contractor Intellectual Property” means any intellectual property that is owned by Contractor and contained in or necessary for the use of the Deliverables. Contractor Intellectual Property includes Software owned by Contractor, including but not limited to the application as described in Exhibit H, Documentation, and derivative works and compilations of any Contractor Intellectual Property.

“DAS” means the State of Oregon acting through its Department of Administrative Services.

“Data Error” – means errors in System data caused by failures in data conversion or failures caused by System processing. Data entry errors are not Data Errors.

“Defect” means a reproduceable failure of the System to operate in accordance with the functional and technical requirements and specifications stated in Exhibit K and the Statement of Work, despite the proper use of the System. A Defect may be due to a Data Error, or a problem with the System, Documentation, or both. Prior to Final Acceptance, a Defect may be due to a missed, missing, or misinterpreted requirement. Defects fall into one of the following categories:

Level 1 Defects – Catastrophic. The System or a main subsystem is unavailable, preventing the System or a core function from operating or causing core functions or major functionality to operate with grossly incorrect results, such as material data processing errors. There is no workaround.

Level 2 Defects – Major. Use of the System or a subsystem is interrupted or a System failure otherwise causes major functions to not operate or to operate with significantly incorrect results, such as data processing errors. There is no workaround.

Level 3 Defects – Minor. Does not qualify as a Level 1 Defect or Level 2 Defect but which nonetheless prevents minor functionality from operating or causes minor functions to operate with incorrect results. There is a clear business need to have the System repaired, but workarounds exist for business operations.

Level 4 Defects – Insignificant. Does not affect functionality of the System. Low priority with no direct impact on clients or Agency staff. Cosmetic or nonessential in nature.

“Deliverables” means all items that Contractor is required to provide to Agency under this Contract, including Work Product.

“Delivery Schedule” means that attribute of the Statement of Work setting forth the completion date of each Milestone and the delivery date for each Deliverable.

“Documentation” means all documents, including documents that are Deliverables described in the Statement of Work and which may include any and all operator’s and user’s manuals, training materials, guides, commentary, listings, requirements traceability matrices and other materials for use in conjunction with and for the operation of the System and its components that are to be delivered by Contractor under this Contract.

“DOJ” means the State of Oregon acting through its Department of Justice.

“Effective Date” means the date specified in Section 4 or the date on which this Contract is fully executed and approved according to applicable laws, rules and regulations, whichever is later.

“Final Acceptance” is defined in Section 3.6.

“Hardware” means the System hardware identified pursuant to Exhibit A, and all related Documentation, that Contractor will deliver to Agency pursuant to this Contract.

“Help Desk Support” means all necessary activities to assist the users to effectively and efficiently use the System. There are three levels of support:

Level 1 Support. Provides basic software and hardware support to end users

Level 2 Support. Provides more complex user support on software and is usually an escalation from Level 1 Support.

Level 3 Support. Provides yet more complex user support on software and is an escalation from Level 2 Support. Includes resolution of data processing errors.

“Implementation” or “Implement” means the process of Contractor preparing and deploying the System or a component thereof to the stated environment (i.e., Demonstration and Production). Implementation includes all Services required to provide a complete and functioning System, and to prepare Agency to use it effectively.

“Implementation Pilot” means testing of the entire System in the Production Environment with Agency Data that is accessible to a subset of all System users selected by the Agency at an Agency-designated test site.

“Intellectual Property Rights” is defined in Section 12.2.

“Key Persons” means Contractor’s Authorized Representative, the Project Manager, and all other Contractor personnel designated as Key Persons in Exhibit F.

“Maximum Not-To-Exceed Compensation” is defined in Section 6.1.

“Milestone” means the completion date for a specific group of Tasks or Deliverables identified as a Milestone in the Statement of Work.

“Production Environment” means the Hardware, programming languages, and Software, including operating system software, and the system architecture and firmware necessary for the System to operate in accordance with its specifications.

“Project Manager” means Contractor’s representative who manages the processes and coordinates the Services with Agency’s Authorized Representative to ensure delivery of the Deliverables and completion of Milestones. Contractor’s Project Manager is the person so identified in Exhibit F.

“Proposal” means Contractor’s proposal in response to the RFP.

“Retention Amount” is defined in Section 6.3.

“RFP” means the Request for Proposal #_____.

“Schedule of Deliverables” means the attributes of the SOW that describe each Task, Deliverable, measurable attributes of each Deliverable and Milestone with identification of the Services that are associated with them, and a completion date for each Milestone and Deliverable. The Schedule of Deliverables may include the current, Accepted Project Implementation Plan and Schedule.

“Services” means all effort to be expended by Contractor under the Contract, including but not limited to Installation, configuration, implementation, maintenance support, warranty services, and support.

“Service Level Agreement” or “SLA” means an agreement that defines specific elements of the Services, periods of time for completing the defined Services, measurable conditions for determining successful completion, and consequences for not meeting the SLA. The SLA may contain conditions for starting, stopping, and pausing the measurement of the relevant time period.

“Software” is an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating software, Software as a Service, Application Services, programming aids, application programs, and software products.

“State” means the State of Oregon.

“Statement of Work” or “SOW” means the documents that describe the Services to be provided by Contractor, including the Tasks, Deliverables and Milestones, the attributes (including requirements and specifications) of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the Payment Schedule for each Deliverable and Milestone, and any other items as agreed by the parties and attached hereto as Exhibit A, including as amended pursuant to section 7. The SOW includes Accepted Deliverables, including the Project Implementation Plan and Schedule, if specifically agreed upon in Exhibit A.

“System” means the sum total of the Services, Application Services, developments, Work Product, Deliverables, Contractor Intellectual Property, Third Party Intellectual Property Software, the Hardware and the Documentation described in the Statement of Work that comprise the information system that Contractor will deliver, develop, install configure and implement under this Contract.

“System Requirements” are contained in Exhibit K.

“Task” means a segment of the Services to be provided by Contractor under this Contract.

“Third Party Intellectual Property” means any intellectual property owned by parties other than Agency or Contractor. Third Party Intellectual Property includes Software owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

“Warranty Period” means one of the time periods that begins and ends on the dates specified in Section 3.7.

“Work Product” means everything that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s subcontractors or agents (either alone or with others) pursuant to the Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product is not Agency Intellectual Property, Contractor Intellectual Property, or Third Party Intellectual Property.

2. TERM.

The Effective Date of this Contract is _____, or the date on which this Contract is fully executed and approved according to applicable laws, rules and regulations, whichever is later. This Contract terminates on [date to be determined at Contract execution, and is anticipated to be ____ years from Final Acceptance], unless otherwise terminated or extended in accordance with its terms. Notwithstanding the foregoing, the term for any License or Maintenance and Support Agreements attached hereto is as specified in those agreements, unless otherwise terminated in accordance with the terms of this Contract.

3. SCOPE OF SERVICES.

3.1. Performance and Delivery.

3.1.1. **Responsibilities of Contractor.** Contractor shall perform the Services as set forth in the Statement of Work, in accordance with the current, Accepted Project Implementation Plan and Schedule and the standards and methodologies set forth in the Statement of Work and elsewhere in this Contract. Contractor agrees to perform the Services employing a methodology that conforms to the standards established by the Project Management Institute (PMI) as described in the Project Management Body of Knowledge (PMBOK), Fifth Edition (PMBOK Guide, ANSI/PMI 99-001-2013), supplemented by standards set forth in ISO 12207 as well as standards established by DAS for quality assurance and quality management services. DAS' policies are found online at: http://www.oregon.gov/DAS/CIO/ITIP/Pages/IT_Investment_Oversight.aspx, and may be updated from time to time.

3.1.2. If Agency elects to have the Contractor provide Hardware, Contractor shall deliver any Hardware to the Agency F.O.B. destination, to the destination specified by Agency, and according to the delivery schedule approved by Agency. Title for the Hardware will pass to the State of Oregon for each piece of Hardware on the date of Final Acceptance. During the period that Hardware is in transit, and until the Hardware is tendered to enable Agency to take delivery of the Hardware, Contractor and its insurers, if any, relieve the Agency and the State of Oregon of the responsibility for all risk of loss of, or damage to, the Hardware. Thereafter, all risk of loss of, or damage to, the Hardware will be borne by the State.

3.2. **Responsibilities of Agency.** If this Contract requires Agency to provide any resources, and Agency fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner for a period that does not exceed thirty (30) Calendar Days, Contractor's sole remedy is an extension of the applicable delivery

dates corresponding to the delay caused by Agency. If Agency's failure to provide such resources exceeds thirty (30) Calendar Days and Contractor can show to the reasonable satisfaction of Agency, that the Agency's failure has resulted in an unavoidable increase in the cost of the Services required for the Statement of Work then Contractor will be entitled to recover from Agency the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates or recover for increased costs may be exercised only if Contractor provides Agency with reasonable notice of Agency's failure and Contractor uses commercially reasonable efforts to perform notwithstanding Agency's failure to perform.

3.3. Delivery and Review of Deliverables.

- 3.3.1. Contractor shall deliver Deliverables and complete Milestones as set forth in the Statement of Work by no later than the date or dates set for delivery in the Statement of Work. Delivery dates, both critical and non-critical, are set forth in the Statement of Work and are subject to Agency performing its responsibilities in a timely manner.
- 3.3.2. Contractor shall provide written notice to Agency upon delivery of a completed Deliverable to Agency. By no later than (i) fifteen (15) Business Days after receipt of such notice, or (ii) the date set forth for Agency's review in the current Accepted Project Implementation Plan and Schedule, Agency will determine whether the Deliverable meets Acceptance Criteria set forth in the Contract. Acceptance Criteria includes all requirements for a Deliverable and associated Services described in the Statement of Work, and the Performance Warranties in Section 11.2. With respect to any Deliverables that are susceptible to Acceptance Testing, Agency will conduct interim Acceptance Testing as set forth in Section 3.4.1. If Agency determines that the Deliverable meets, in all material respects, Acceptance Criteria, Agency will notify Contractor of Agency's Acceptance in writing.
- 3.3.3. If the Agency determines that a Deliverable does not meet the Acceptance Criteria in all material respects, Agency will notify Contractor in writing of Agency's rejection of the Deliverable, and describe in reasonable detail in such notice the Agency's basis for rejection of the Deliverable. Upon receipt of notice of non-acceptance, Contractor shall, within a fifteen (15) Business Day period, modify or improve the Deliverable at Contractor's sole expense so that the Deliverable meets, in all material respects, the Acceptance Criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverable to Agency. Agency will thereafter review the modified or improved Deliverable within fifteen (15) Business Days of receipt of the Contractor's delivery of the Deliverable. Failure of the Deliverable to meet the Acceptance Criteria in all material respects after the second submission will constitute a default by Contractor. In the event of such default, Agency may either (i) notify Contractor

of such default and instruct Contractor to modify or improve the Deliverables as set forth in this section 3.3.3, or (ii) notify Contractor of such default and pursue its remedies for default under Section 16 of this Contract.

3.4. Acceptance Testing.

3.4.1. System Testing. In accordance with Agency's written notice to proceed with System Testing, Contractor shall configure and implement the System in the Test Environment in accordance with the System Testing Task in Exhibit A, and use it in off-line processing of test data in order to determine if the System is in material conformance with System Requirements set forth in Exhibit K, and in Deliverable ____, Functional Specifications Document, as that Deliverable is Accepted at the time of testing under this section. If Level 1 Defects, Level 2 Defects, or Level 3 Defects are discovered in the System, Contractor shall correct such Defects and retest at no additional charge to Agency prior to completion of System Testing under this Section. Contractor shall resolve Level 4 Defects at no additional charge to Agency within Agency-approved timeframes.

3.4.2. User Acceptance Testing (UAT). After Agency's acceptance of the final Deliverable ____, System Test Documentation and Results Report, the correction of all known Level 1 Defects, Level 2 Defects, and Level 3 Defects discovered prior to UAT, Agency will test the entire System by using it in off-line processing using both test data and the Agency's converted operational data in order to determine if the System is in material conformance with System Requirements set forth in Exhibit K, and in Deliverable ____, Functional Specifications Document, as that Deliverable is Accepted at the time of testing under this section. Contractor shall deliver UAT Services in accordance with the UAT Task in Exhibit A. Agency will notify Contractor in writing of each Defect discovered during UAT in accordance with the Accepted User Acceptance Test Plan, and specify its level. Contractor shall correct all Level 1 Defects, Level 2 Defects, and Level 3 Defects identified during UAT at no additional charge to Agency, and resubmit the corrected System to Agency for retesting within ten (10) Business Days of a written notice of Defect. All such retesting will be done on an iterative basis and be completed by Agency no later than ten (10) Business Days after Contractor submission of the corrected System. Contractor shall correct all Level 1 Defects, Level 2 Defects, and Level 3 Defects prior to completion of UAT activities under this section. Contractor shall resolve Level 4 Defects discovered during UAT at no additional charge to Agency within Agency-approved timeframes.

3.4.3. Production Pilot. After Agency's Acceptance of the final Deliverable ____, UAT Test Results Report, and upon Agency's notice to proceed with the Implementation Task, Contractor shall implement the System in the Production Environment and prepare the Implementation Pilot site selected by Agency. Agency will test the entire System by using it in processing of Agency's converted operational data in

the Implementation Pilot site in order to validate that the System is functioning in the Production Environment, validate the Implementation methodology, validate the user and site preparedness activities, and determine if the System is in material conformance with Requirements set forth in Exhibit K, and Deliverable _____, Functional Specifications Document, as those Deliverable is Accepted at the time of activities under this section.

3.4.3.1. Except as provided below in the next section, if Level 1 Defects, Level 2 Defects, or Level 3 Defects are discovered during the Production Pilot period, Agency will notify Contractor of the Defect orally or in writing as soon as reasonably practical, and will provide written notification of the Defect(s) no later than five (5) Business Days after discovery, specifying the Defect as a Level 1 Defect, Level 2 Defect, or Level 3 Defect. Upon receipt of such written notice, Contractor shall correct any Level 1 Defects, Level 2 Defects, and Level 3 Defects within ten (10) Business Days from the date of the written notice, and resubmit the corrected System to Agency for retesting in accordance with this section at no additional charge to Agency. Agency will complete all such retesting no later than ten (10) Business Days after Contractor submission of the corrected System.

3.4.3.2. Beginning fifteen (15) Calendar Days prior to the end of the Production Pilot period set forth in the current Accepted Project Implementation Plan and Schedule, if Level 1 Defects, Level 2 Defects, or Level 3 Defects are discovered, Agency will notify Contractor of the Defect orally or in writing as soon as reasonably practicable, and will provide written notification of the Defect(s) no later than three (3) Business Days after discovery, and specify its level. Upon receipt of such written notice, Contractor shall correct any such Level 1 Defects, Level 2 Defects, or Level 3 Defects within three (3) Business Days from the date of the written notice and resubmit the corrected System to Agency for retesting in accordance with this section at no additional charge to Agency. Agency will complete all such retesting no later than three (3) Business Days after Contractor submission of the corrected System.

3.4.3.3. Contractor shall resolve Level 4 Defects discovered during the Production Pilot period at no additional charge to Agency within Agency-approved timeframes.

3.5. **System Stabilization Period.** Upon completion of the Production Pilot, including Contractor's correction of identified Level 1 Defects, Level 2 Defects, and Level 3 Defects, and Agency's notice to proceed, Contractor shall fully implement the System. After Implementation at all Program sites, Agency will use the System for processing of System data in a statewide live Production Environment for a period of 90 (ninety) Calendar Days.

- 3.5.1. If Defect(s) are discovered during the System Stabilization Period, Agency will notify Contractor of the Defect in writing as soon as practical, describing the Defect and specifying its level. Upon receipt of such written notice, Contractor shall correct any Level 1 Defect within four (4) consecutive hours, any Level 2 Defect within twenty four (24) consecutive hours, and any Level 3 Defect within three (3) Business Days from the time of the written notice, and submit the corrected System to Agency for validation in accordance with this Section, at no additional charge to Agency. All such validation will be completed by the Agency no later than three (3) Business Days after Contractor submission of the corrected System.
- 3.5.2. At the end of the System Stabilization Period, if any Level 1 Defects, Level 2 Defects, or Level 3 Defects discovered during the Acceptance Period remain uncorrected, Agency will grant Contractor one additional five (5) Business Day period from the end of the System Stabilization Period to correct such Defects. If the Defects are not corrected during that period, unless Agency in its discretion allows additional time for correction, Agency may declare a material breach of this Contract by Contractor.
- 3.5.3. The Parties will set priorities for Level 4 Defects remaining at the end of the System Stabilization Period, and Contractor shall correct such Defects during one or more a maintenance release(s) to be delivered on a mutually agreed upon schedule.
- 3.5.4. Completion of this System Stabilization Period will mark the end of the Implementation Task.
- 3.6. **Final Acceptance.** "Final Acceptance" of the System will occur when the following events have occurred or conditions exist:
- 3.6.1. Agency has notified Contractor that the System meets all Acceptance Criteria and all Acceptance Tests required pursuant to Section 3.4 have been successfully completed for the System including as specified in SOW, Contract Exhibit A, Task ____ –User Acceptance Testing;
- 3.6.2. The System is stable, complete, and operating correctly as specified in SOW, Contract Exhibit A, Task ____ – Implementation, without Level 1 Defects, Level 2 Defects, or Level 3 Defects;
- 3.6.3. All Documentation is complete, inventoried, and Accepted by Agency; and
- 3.6.4. Contractor has completed and Agency has Accepted Deliverables for User Training and Technical Training as specified in SOW, Contract Exhibit A, Task ____ – User Training.

3.7. Warranty Period.

3.7.1. Post-Implementation Warranty Period. Contractor shall warrant the System for a period of three hundred and sixty-five (365) Calendar Days following Final Acceptance. During the Post-Implementation Warranty Period, Contractor shall, at no additional charge to Agency, furnish such materials and Services necessary to correct any Defects in the System that prevent the System from meeting the Acceptance Criteria and Contract warranties. Contractor shall cure Defects discovered during the Post-Implementation Warranty Period that prevent the System from meeting the Acceptance Criteria and Contract warranties.

3.7.2. System Change Warranty Period. Contractor shall warrant System changes that modify or enhance the System Accepted at Final Acceptance, and that are not Defect corrections, for a period of ninety (90) Calendar Days following Acceptance of the implemented System change. Contractor shall, at no additional charge to Agency, furnish such materials and Services necessary to correct any Defects related to the System change that prevent the System from meeting the Acceptance Criteria and Contract warranties. Contractor shall cure Defects discovered during the System Change Warranty Period that prevent the System from meeting the Acceptance Criteria and Contract warranties.

3.8. Performance Metrics and Service Level Agreements.

3.8.1. Contractor agrees to meet the performance metrics and Service Level Agreements established in Contract Exhibit A, Statement of Work, and Contract Exhibit B, Performance Standards, during the Contract term. As needed to meet the System Requirements and specifications, and the performance standards of the Contract, Contractor shall provide, maintain, and upgrade any Hardware and related equipment, and Software provided by Contractor and required for delivery and operation of the System.

3.8.2. Failure to Perform.

3.8.2.1. If Contractor fails to meet a performance standard, including a Service Level Agreement, Contractor shall (i) investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a root cause analysis of the problem; (ii) advise Agency, as and to the extent requested by Agency, of the status of remedial efforts being undertaken with respect to such problem; (iii) minimize the impact of and correct the problem and begin meeting the performance standard; and (iv) take appropriate preventive measures so that the problem does not recur.

3.8.2.2. As provided in Section 15.1, Contractor agrees to pay liquidated damages specified in Exhibit B if Contractor fails to provide Deliverables and Services as

and when required by the Statement of Work or fails to meet the performance metrics and Service Level Agreements specified in Exhibit A or Exhibit B. This section does not limit Agency's rights with respect to the events upon which Agency may rely as a basis for Agency's termination of this Contract for cause.

3.8.3. Measurement and Monitoring Tools. Contractor shall utilize the necessary measurement and monitoring tools and procedures required to measure and report Contractor's performance of the Services against the applicable Service Level Agreements. Such measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Service Level Agreements, and is subject to audit by Agency. Contractor shall provide Agency with information and access to such tools and procedures, for purposes of auditing and verification.

3.9. Transition Services. Contractor shall provide transition services to support a responsible and secure transition of Services and Agency Data to another service provider or to Agency ("Transition Services").

3.9.1. Upon receipt of a notice prior to expiration that Agency will engage Contractor's Transition Services, or receipt of notice of termination and notwithstanding the reason for termination (whether for cause or without cause and whether by Contractor or Agency, and whether for all or some Services), Contractor shall continue to provide Services and shall provide Transition Services as described in the Transition Plan (defined below) for the period set in the notice and in the subsequent Transition Plan (the "Transition Period"), on the following conditions:

3.9.1.1. Agency is up-to-date with its undisputed payment obligations at the commencement of the Transition Period, and

3.9.1.2. Agency pays all undisputed invoices during the Transition Period in accordance with its obligations referenced in Section 6.

3.9.2. If during the Transition Period Contractor believes Agency is not in compliance with the foregoing conditions, Contractor shall give Agency written notice of such noncompliance and Agency will have fifteen (15) Business Days, or such longer period to which the parties may agree, to correct the noncompliance before Contractor may end the Transition Period and move to the Wind-Down Phase described below.

3.9.3. Following receipt of the notice of termination (whether or not Contractor or Agency initiated the termination), Contractor shall not, without Agency's prior written consent, which will not be unreasonably withheld, transfer, reassign, or otherwise redeploy any of Contractor's personnel from providing Services under this Contract.

3.9.4. **Transition Plan.** Contractor and Agency will outline a Transition Plan, which may be requested pursuant to a notice of termination or in anticipation of the Contract terminating in accordance with its terms. The Transition Plan may serve as an update to or a confirmation of a Transition Services Task in the Statement of Work. Contractor shall deliver a detailed Transition Plan within 14 (fourteen) Calendar Days of Agency's written request, or otherwise within a timeframe agreed upon by the parties, for Agency review. The Transition Plan will not be effective until it is approved by the Oregon Department of Justice ("DOJ"). This plan will determine the nature and extent of Contractor's Transition Services obligations and detail the transfer of Services and Agency Data. The Transition Period will commence on the date set in the DOJ-approved Transition Plan; provided, however, if Contractor does not deliver an acceptable Transition Plan on or before the Contract termination date, then the parties will abide by a draft of the plan promulgated by Agency until the Transition Plan is approved by DOJ. The Transition Plan must address at least:

3.9.4.1. The respective Tasks and Deliverables to be completed by each party in during the Transition Period,

3.9.4.2. A schedule pursuant to which such Tasks and Deliverables will be completed, and

3.9.4.3. A schedule identifying which party is responsible for paying the cost (if any) related to each Task and Deliverable. This schedule may include Transition Services that will not exceed the current Contract NTE. If the parties agree Transition Services require new or additional Services that cause an increase in the Contract NTE, the Transition Plan will be in the form of a Contract amendment.

3.9.5. The parties will cooperate in good faith with each other in connection with their obligations under this Section 3.9 and will perform their obligations under the DOJ-approved Transition Plan. If the Transition Period extends beyond the Contract term, the provisions of this Contract will remain in effect for the duration of the Transition Period.

3.9.6. Contractor shall complete the transition of Services and Agency Data from Contractor and its subcontractors to Agency and to any providers that Agency designates, without causing any unnecessary interruption of or adverse impact on the Services.

3.9.7. Without limiting the generality of the aforementioned obligations, Contractor shall:

3.9.7.1. Cooperate with Agency and any Agency-designated provider by promptly taking all steps required to assist Agency in completing the Transition Plan..

3.9.7.2. Provide Agency and any Agency-designated provider with all information regarding the Services, Agency Data, and Deliverables that these parties will

need to complete the Transition Period. This includes data conversions, data access or transfers, and interface specifications.

3.9.7.3. Promptly and orderly conclude all Services as Agency may direct. This may include the documentation of work in progress and other measures to provide an orderly transition to Agency and any Agency-designated provider.

3.9.8. **Wind-Down.** Upon the later of (a) the termination of this Contract or (b) termination of the Transition Period, Contractor will cease to perform Services, and Agency will pay Contractor all amounts payable to Contractor for Deliverables and Services delivered, and pre-approved expenses incurred through the end of the Contract or Transition Period; provided, however, when such termination is due to the breach or bankruptcy of Contractor, Agency will not be required to pay any amounts claimed by Contractor to be due until Agency determines what, if any, setoffs are required and the remedies owed to Agency are either agreed upon by Contractor through a settlement or ordered by a court of competent authority.

4. **CONTRACTOR'S PERSONNEL.**

4.1. **Key Persons.** Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's Key Persons identified in Exhibit F. Contractor's Key Persons shall not delegate performance of their powers and responsibilities they are required to provide under this Contract to another Contractor employee(s) without first obtaining the written consent of the Agency. Further, Contractor shall not re-assign or transfer a Key Persons to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace Key Persons without Agency's consent in the event any Key Persons are no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons, Agency may interview, review the qualifications of, and approve or reject the proposed replacement(s) for the Key Persons. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency will thereafter be deemed a Key Person for purposes of this Contract and Exhibit F deemed amended to include such Key Person. Agency reserves the right to determine if a replacement Key Person has acquired the project knowledge and skills necessary to perform within the twenty-eight (28) calendar day period following Agency approval of the replacement Key Person.

4.1.1. Contractor shall not charge Agency, and Agency will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed

upon by the parties, and will last for a minimum of fourteen (14) Calendar Days but not more than twenty-eight (28) Calendar Days, and will be reflected as an adjustment to a fee for a Deliverable associated with the replacement Key Person's Services.

4.2. **Project Manager.** Contractor shall designate one of its Key Persons as Project Manager for the Services through at least Final Acceptance. The Project Manager shall be familiar with Agency's business operations and objectives. The Project Manager will participate with Agency in periodic review sessions and will provide at Agency's request detailed progress reports that identify completed tasks and the status of the Services required to deliver a System that meets Final Acceptance criteria.

4.3. **Contractor's Employees and Subcontractors.** Contractor shall not use subcontractors to perform the Services without the Agency's prior written consent. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services, will perform the Services in accordance with the warranties set forth in Section 11 of this Contract.

5. **INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING.**

5.1. **Independent Contractor.** Contractor shall perform all Services as an independent contractor. Although Agency reserves the right to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

5.2. **No Partnership.** This Contract is not intended, and will not be construed, to create a partnership or joint venture between Agency and Contractor. Nothing in this Contract will be construed to make Agency and Contractor partners or joint venture participants.

5.3. **Declaration and Certification.** Contractor by execution of this Contract declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel who will perform Services under this Contract, and (ii) in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Services under this Contract. Contractor also declares and certifies by execution of this Contract that it is not an "officer," "employee," or "agent" of Agency, as those terms are used in ORS 30.265.

5.4. **Responsible for Taxes.** Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation and payments any amount to cover Contractor's federal or state

tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

5.5. **Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon before entering into this Contract.

5.6. **Disclosure of Social Security Number.** Contractor shall provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws-

6. **COMPENSATION.**

6.1. **Maximum Payment Amount.** Notwithstanding any other provision of this Contract to the contrary, the maximum, not-to-exceed compensation that Agency will pay to Contractor is _____ Dollars (\$_____) (the "Maximum Not-To-Exceed Compensation"), which includes payment for any allowable expenses for which Contractor may request reimbursement under this Contract.

6.2. **Payments.** Payments are subject to Section 6.3 and 6.6.

6.2.1. **Payment of Fixed Prices.** Agency will pay to Contractor the fixed price listed in Exhibit M for each Deliverable completed, delivered to, and Accepted by Agency, and the fixed price for each license and Service Fee listed in Exhibit M.

6.2.2. **Payment for Hardware.** Subject to the parties' agreement that Contractor will provide any Hardware under this Contract, Agency will pay Contractor for any Hardware delivered under this Contract upon Agency's Acceptance of the Hardware in accordance with the prices and delivery terms negotiated by the parties and memorialized in Exhibit M.

6.2.3. **Payment for Software.** Subject to the parties' agreement that Contractor will provide any Software under this Contract, Agency will pay Contractor for Software, including Third Party Intellectual Property (third party software), required and delivered under this Contract, upon Acceptance of such Software in accordance with the prices and delivery terms negotiated by the parties and memorialized in Exhibit M.

6.3. **Retention Amount.**

- 6.3.1. **Retention Amount for Services.** Through Final Acceptance, Agency may hold back an amount (the "Retention Amount") of not more than ten percent (10%) of any amount that is payable by Agency to Contractor for Services, including Application Services. Agency will pay the then-accrued Retention Amount to Contractor within thirty (30) Calendar Days following Final Acceptance.
- 6.3.2. **Retention Amount for Hardware and Software.** No retention amount will be withheld for purchases of Hardware and licenses for Third Party Intellectual Property.
- 6.3.3. **Retention Amount for Equipment.** No retention amount will be withheld from payments to Contractor for the costs of equipment.
- 6.4. **Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement Work and Exhibit M. Any such authorized travel expenses must comply with the Oregon Travel Policy, OAM 40.10.00.
- 6.5. **Invoices.** Agency will pay Contractor not more than once each month upon Contractor's submission of a detailed invoice that sets forth the Services performed and Deliverables Accepted by Agency. Such invoices must comply with the requirements of Sections 6.2, 6.3, and 6.4, identify the Deliverables completed and Accepted for which Contractor seeks compensation, and itemize and explain all authorized expenses for which reimbursement is claimed. The invoices must also include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall submit invoices to Agency's Authorized Representative. Agency will have the right to review each such invoice for compliance with the requirements of this section and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462.
- 6.6. **Limit on Payments.** Contractor shall not submit invoices for, and Agency will not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Contract, pursuant to Section 7, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or goods delivered before the Effective Date or after termination of this Contract.
- 6.7. **Funds Available and Authorized.** Contractor will not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon. Agency believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

7. **Amendments.** This Contract may be amended, modified, or supplemented only by a written amendment signed by Agency and Contractor that, if required by applicable law, has been approved by DAS and for legal sufficiency by DOJ. Any amendment that provides for additional goods or Services may only provide for goods or Services directly related to the scope of goods and Services described in the RFP, and no amendment will be effective until all requisite signatures and approvals are obtained. Either Agency or Contractor may request a change to this Contract, including all Exhibits hereto, by submitting a written proposal describing the desired change to the other party.

7.1. **Change Control.** Subject to the conditions above, amendments to the Statement of Work, Exhibit B, and related costs may be managed through an Agency-authorized change control process that reflects at least the processes described in this section. Either Agency or Contractor may request a change by submitting a written proposal describing the requested change to the other party. Agency's and Contractors' Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

7.1.1. **Analysis of Change Requests; Change Orders.** The parties will analyze each change request (that has not been rejected) in accordance with the authorized change control process to determine the effect that the implementation of the change will have on the Statement of Work, Exhibit B, and related costs. If Contractor requests to make changes in its design or implementation of the System to enable the System to meet System Requirements, such changes will be made at no cost to Agency, unless such changes are due to the failure of Agency or its agents to perform their responsibilities in a timely manner. If the analyzed change request is mutually approved, the agreed-upon party will prepare a written change order, detailing all modifications to the Statement of Work, Exhibit B, and related costs (the "Change Order"). A Change Order at a minimum must contain:

- 7.1.1.1. The effective date of the Change Order;
- 7.1.1.2. A detailed description of the Services to be performed under the Change Order;
- 7.1.1.3. The particular specification or matter in the Contract which will be altered, and the precise scope of that alteration;
- 7.1.1.4. Whether the Change Order modifies critical path Deliverables or Milestones;
- 7.1.1.5. Whether the changes are to be included in the System for Implementation;
- 7.1.1.6. Any change in the cost of the Services to be performed pursuant to the Change Order; and

7.1.1.7. The cumulative cost changes of all Change Orders previously issued.

7.1.2. A Change Order may alter only that portion of the Statement of Work, Exhibit B, and related costs to which it expressly relates and must not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Contract. No Services may be performed pursuant to the Change Order and no payment will be made on account of the Change Order until the Change Order is fully executed and all required State of Oregon approvals are received.

7.1.3. **Payments.** Subject to the foregoing provisions of this Section and performance of the Services, Agency will pay for Services performed pursuant to a Change Order according to the acceptance and payment procedures set forth in this Contract.

8. OWNERSHIP AND LICENSES.

8.1. **Contractor Intellectual Property.** Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Agency pursuant to the Services performed under this Contract. Contractor grants Agency a license to Contractor Intellectual Property as set forth in Exhibit H. In the event that Work Product is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property, or a compilation that includes Contractor Intellectual Property, and provided Agency has paid any applicable licensing fee, Contractor grants Agency a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

8.2. **Work Product.** Contractor owns all Work Product.

8.3. **Third Party Intellectual Property.** Unless otherwise specified in Exhibit A that Agency, on its own, will acquire and obtain a license to Third Party Intellectual Property, Contractor shall secure on Agency's behalf, in the name of Agency and subject to Agency's approval, a license to Third Party Intellectual Property necessary for Agency to access and receive the benefit of the System and Services. Licenses for Third Party Intellectual Property are set forth in Exhibit H, and Exhibit H will be deemed to include any additional licenses for Third Party Intellectual Property approved by Agency. In the event that Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Contractor shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

8.4. **Open Source Elements.** Any Open Source materials in the System must be approved in advance and in writing by Agency. If Contractor desires to include Open Source materials, Contractor shall:

8.4.1. Notify Agency in writing that the System contains Open Source materials,

8.4.2. Identify the specific portion of the System that contain Open Source materials, and

8.4.3. Provide a copy of the applicable license for each Open Source item to Agency.

8.5. **Agency Intellectual Property; Data and Background Information.** Agency owns all Agency Intellectual Property and Agency Data provided to or collected by Contractor pursuant to this Contract. Agency grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Agency Intellectual Property and Agency Data only to fulfill the purposes of this Contract. Agency's license to Contractor is limited by the term of the Contract and the confidentiality obligations of this Contract.

8.6. **No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

8.7. Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

8.8. **Competing Services.** Subject to the provisions of this Section 8, and Contractor's obligations with respect to Confidential Information, including as defined in Section 9, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

8.9. **Ownership of Hardware.** Unless agreed otherwise, all Hardware delivered to Agency by Contractor will be owned exclusively by Agency. Title to the Hardware will pass on the date of Final Acceptance, unless otherwise agreed upon by the parties.

9. CONTRACTOR'S DUTIES CONFIDENTIALITY AND NON-DISCLOSURE.

9.1. Confidential Information. Contractor acknowledges that it and its employees or agents may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract is deemed to be confidential information of Agency ("Confidential Information"). Contractor shall treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not to include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

9.2. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, **assign**, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at Agency's request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

9.3. Prohibition on Data Mining. Contractor shall not capture, maintain, scan, index, share or use Agency Data stored or transmitted by the Application Services, or otherwise use any data-mining technology, for any non-authorized activity. For purposes of this requirement, "non-authorized activity" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial

purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Contract.

9.4. Identity Theft. In the performance of this Contract, Contractor may have possession or access to documents, records or items that contain “Personal Information” as that term is used in ORS 646A.602(11), including social security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

9.4.1. In addition to and without limiting the generality of Sections 9.1 and 9.2, Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Contract. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

9.4.2. Contractor shall promptly report to the Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Contract.

9.4.3. Contractor shall require the compliance of its employees, agents, and subcontractors with this Section.

9.5. Security and Hosting Requirements / Non-Disclosure Agreement / Criminal Background Check. The following is required of Contractor and its employees, agents, and subcontractors performing services under this Contract:

9.5.1. **Security and Hosting Requirements.** Contractor shall comply at all times with Agency’s Security and Hosting Requirements [attached as Exhibit L, as they are stated in this Contract or otherwise made available to Contractor.

9.5.2. **Non-Disclosure Agreement.** Contractor shall upon Agency’s request provide a written non-disclosure agreement and obtain such from Contractor’s employees, agents, and subcontractors performing Services under this Contract.

9.5.3. **Criminal Background Check.** Contractor's employees, agents and subcontractors that will perform Services under this Contract must submit to a criminal background check conducted by Agency. Such background check must occur prior to arrival on Agency premises or prior to access of Agency Confidential Information, whichever occurs first. Background checks will be performed at Agency expense. Agency in its sole discretion has the right to reject any Contractor employee, agent, or subcontractor, or limit any such person's access to the System or premises based on the results of the background check.

9.6. **Confidentiality Policies.** Contractor shall, upon Agency's request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency's review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.

9.7. **Injunctive Relief.** Contractor acknowledges that breach of this Section 9, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

9.8. **Publicity.** Contractor agrees that it will not disclose the form, content or existence of this Contract or any Deliverable in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Contractor's services, without the prior written consent of Agency.

10. CONTRACTOR'S PROPRIETARY INFORMATION; OREGON PUBLIC RECORDS LAWS. Agency will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Contract and applicable state and federal law. Contractor acknowledges and agrees any disclosures of its proprietary information that Contractor makes under this Contract that are not otherwise protected by applicable law are subject to the Oregon Public Records Laws, including ORS 192.410-192.505, and the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170.

10.1. Contractor proprietary information is any information marked or designated in writing by Contractor as "confidential" prior to initial disclosure, or information disclosed orally that is confirmed in writing as "confidential" within 10 (ten) Calendar Days of disclosure.

- 10.2. Agency may disclose Contractor proprietary information to its third party Quality Assurance contractor.
- 10.3. Agency may disclose and provide copies of Contractor proprietary information to the extent disclosure is required by the Oregon Public Records Law (ORS 192.410 to 192.505). If Agency receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor proprietary information, Agency will notify Contractor within a reasonable period of time of the request. Contractor is exclusively responsible for defending Contractor's position concerning the confidentiality of the requested information. Notwithstanding the foregoing, while Agency is not required to actively assist Contractor in opposing disclosure of proprietary information, Agency will cooperate in good faith to the extent reasonably practicable with Contractor's efforts to protect its proprietary information.
- 10.4. The confidentiality obligations imposed by this section do not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information known to the recipient prior to the effective date of this Contract without obligation of confidentiality; (iv) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Agency is required to disclose Contractor proprietary information under clause (v), Agency will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.
- 10.5. **Injunctive Relief.** Agency acknowledges that Agency's use and disclosure of Contractor's proprietary information not in accordance with this Section 10 will cause irreparable injury to Contractor that is inadequately compensable in damages. Accordingly, Contractor may seek and obtain injunctive relief against the breach or threatened breach of this Section 10. Agency acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Contractor and are reasonable in scope and content.

11. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.

- 11.1. **Contractor's General Representations and Warranties.** Contractor represents and warrants to Agency that:
- 11.1.1. Contractor has the power and authority to enter into and perform this Contract;

- 11.1.2. This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms;
- 11.1.3. Contractor will, at all times during the term of this Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services;
- 11.1.4. Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services will not violate any such law, ordinance, regulation or order.
- 11.1.5. Contractor's performance under this Contract to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform Services under this Contract.
- 11.1.6. The Contractor Tax Certification in the form attached hereto as Exhibit D and the Certification Statement For Independent Contractor in the form attached hereto as Exhibit E, are true and accurate as of the Effective Date, and Contractor will notify Agency in writing if any such information or certifications change during the term of this Contract such that the attached Exhibits C or D, if applicable, are no longer true and accurate.

11.2. Contractor's Performance Warranties. Contractor represents and warrants to Agency that:

- 11.2.1. Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in this Contract in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Agency pursuant to this Contract.
- 11.2.2. Through the expiration of the Post Implementation Warranty Period, all Deliverables delivered by Contractor to Agency, and the System as a whole, will materially conform to Acceptance Criteria set forth in this Contract, including the Statement of Work and any Documentation provided by Contractor, and be free from error or Defect that materially impairs their use, and be free from material defects in materials, workmanship, or design.

11.2.3. Contractor shall comply with the standards established by the Project Management Institute (PMI) as described in the Project Management Body of Knowledge (PMBOK), Fifth Edition, the Software Engineering Institute and the Control Objectives for Information and related Technology (COBIT®) objectives, as well as standards established by DAS for quality assurance services.

11.2.4. Contractor shall comply with the applicable requirements set forth in DAS Oregon Statewide IT and Information Security Policies, found at <http://www.oregon.gov/DAS/op/Pages/policies.aspx>, as those policies are amended from time to time. In the event of a DAS IT Policy amendment that impacts the System or the Services, the required change will be managed according to the Change Control process in Section 7.1 of this Contract.

11.2.5. Except as otherwise provided in this Contract (including Section 8), Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.

11.2.6. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.

11.2.7. Contractor will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program that at minimum complies with the requirements of the Oregon Identity Theft Protection Act (ORS 646A. 122 et. seq.) to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control.

11.2.8. The System, is free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Services expressly permitted by the terms and conditions by the license under which it was provided.

11.3. **WARRANTIES EXCLUSIVE; DISCLAIMERS.** THE WARRANTIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR

FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE AGENCY'S USE OF THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE.

- 11.4. The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, any use of the System capacity or capability, other than that authorized by Contractor in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Agency or a third party, or failure or damage caused by a product for which Contractor is not responsible.

12. INDEMNITIES.

- 12.1. **General Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever, including personal injury, death, damage to real property and damage to tangible or intangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract, including: (i) any claim that Contractor, a subcontractor, or Contractor's staff or a subcontractor's staff are employees of the State or Agency for any reason, and (ii) any claim against the State or Agency, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this Contract. Without limiting the generality of the foregoing, Contractor will have no obligation to indemnify Agency or the State of Oregon from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of Agency or the State of Oregon, and their officers, employees or agents.
- 12.2. **IP Indemnity.** In addition to and without limiting the generality of Section 12.1, Contractor expressly agrees to indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables or the System or use thereof infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Agency's prior written consent, which Agency will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Agency the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the System

continues to function in material conformance with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing will be deemed a material breach of this Contract, and Agency may pursue any rights and remedies available to it under this Contract, including termination. Contractor will not be liable under this Section 10.2 for any claim for infringement based solely on the following:

- 12.2.1. Agency's modification of the Deliverables or the System other than as contemplated by this Contract, a Deliverable, the System specifications, or as otherwise authorized by Contractor in writing;
- 12.2.2. Use of the Deliverables or the System in a manner other than as contemplated in this Contract, a Deliverable, the System specifications, or as otherwise authorized by Contractor in writing; or
- 12.2.3. Use of the Deliverables or the System in combination, operation, or use of with other products other than as contemplated by this Contract, a Deliverable, the System specifications, or as otherwise authorized by Contractor in writing.

12.3. **Control of Defense and Settlement.** Contractor's obligation to indemnify Agency as set forth in Sections 12.1 and 12.2 is conditioned on Agency providing to Contractor prompt notification of any claim or potential claim of which Agency becomes aware that may be the subject of those Sections. Contractor will have control of the defense and settlement of any claim that is subject to Section 12.1 or Section 12.2; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor will Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

12.4. **Damages to State Property and Employees.** Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property of the State of Oregon or any of its employees resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract

12.5. **Data and Network Services.** Except to the extent that a claim or loss results from the negligent, reckless or intentional acts or omissions of Agency, Contractor shall assume liability for all claims or losses related to Agency Data loss or breach of security

caused directly or indirectly by or resulting from the System or Services provided by Contractor.

- 12.6. **Insurance.** Contractor shall provide insurance or self-insurance as required by Exhibit C.

13. LIMITATION OF LIABILITY.

- 13.1. EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 12.1, (ii) SECTION 12.2, (iii) SECTION 12.5, (iv) SECTION 9, (v) LIQUIDATED DAMAGES ASSESSED UNDER THIS CONTRACT, OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE FOR ANY CAUSE WHATSOEVER IS BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THE CONTRACT.
- 13.2. EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 12.1, (ii) SECTION 12.2, (iii) SECTION 12.5, (iv) SECTION 9, OR (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

14. EVENTS OF DEFAULT.

- 14.1. **Default by Contractor.** Contractor will be in default under this Contract if:
- 14.1.1. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within sixty (60) Calendar Days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- 14.1.2. Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within thirty (30) Business Days after delivery of Agency's notice or such longer period as Agency may specify in such notice; or
- 14.1.3. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by

reasonable written assurances of performance within thirty (30) Business Days after delivery of Agency's notice or such longer period as Agency may specify in such notice.

14.2. Default by Agency. Agency will be in default under this Contract if:

- 14.2.1. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
- 14.2.2. Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

15. REMEDIES FOR DEFAULT.

15.1. Agency's Remedies. In the event Contractor is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, which include, without limitation:

- 15.1.1. Termination of this Contract under Section 16.2;
- 15.1.2. Withholding or offsetting payment for erroneous invoices or for Services that Contractor is obligated but has failed to perform in accordance with this Contract, including warranties in Section 11;
- 15.1.3. With respect to Hardware and Software for which Agency has paid before Final Acceptance, returning the Hardware and Software to Contractor for which Agency has paid in exchange for a return of all moneys previously paid for such Hardware and Software, and initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;
- 15.1.4. Assessment of damages and liquidated damages as a result of Contractor's failure to provide Deliverables and Services as and when required by Contract Exhibit A, Statement of Work, or as a result of Contractor's failure to meet the performance metrics and Service Level Agreements specified in Contract Exhibit B. If Agency recovers actual damages in addition to liquidated damages, Agency will reduce such actual damages by the amounts received as liquidated damages for the same event(s) causing the actual damages.
- 15.1.5. Exercise of its right of setoff.

15.2. Agency Remedies for Repetitive Service Level Agreement Failures.

Notwithstanding the right of Agency to assess liquidated damages, Agency will have the right to pursue remedies for breach of contract if Contractor commits a material breach of the performance standards or Service Level Agreements set forth in the Statement of Work or Exhibit B. A material breach of performance standards or a Service Level Agreement includes repeated or excessive failures to meet any individual or combination of performance standards. A cure period is not required in the event of repeated or excessive failure to meet performance standards or a Service Level Agreement.

15.3. Remedies Cumulative. These Agency remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Section 14.1, the rights and obligations of the parties will be the same as if this Contract was terminated pursuant to Section 16.1.

15.4. Contractor's Remedies. In the event Agency terminates this Contract as set forth in Section 16.1, or in the event Agency is in default under Section 14.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 16.3, Contractor's sole monetary remedy, except as set forth in Section 15.5 will be a claim for (i) any unpaid invoices for Deliverables completed, delivered and Accepted; and, (ii) for incomplete Deliverables an amount calculated by determining the percentage of Services completed for each unpaid Deliverable and applying that percentage to the fixed price for the Deliverable as set forth in the Statement of Work and any authorized expenses incurred. If previous amounts paid to Contractor exceed the amount due to Contractor under this section, Contractor shall pay any excess to Agency upon written demand.

16. TERMINATION.

16.1. Agency's Right to Terminate. Agency may, at its sole discretion, terminate this Contract, as follows:

16.1.1. Agency may terminate this Contract upon at least thirty (30) Calendar Days' prior written notice to Contractor.

16.1.2. Agency may terminate this Contract if Agency fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Services;

16.1.3. Agency may terminate this Contract if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited or Agency is prohibited from paying for such Services from the planned funding source;

- 16.2. **Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract, in whole or in part, immediately upon written notice to Contractor of Contractor's default under Section 14.1.
- 16.3. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon Agency's default under Section 14.2.
- 16.4. **Mutual Termination.** The parties may agree to terminate this Contract upon at least thirty (30) Calendar Days' prior written agreement.
- 16.5. **Extension of Termination Date.** In addition to Agency's right to extend the term of the Contract under Section 7, Agency may extend the effective period of the Contract one or more times as it elects in its discretion, provided that the total of all such extensions does not exceed 180 (one hundred eighty) Calendar Days following the termination date in place immediately prior to the initial extension under this Section. Agency will provide notice of an extension under this Section to Contractor within 30 (thirty) Calendar Days of the then-scheduled Contract termination date.
- 16.6. **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation Agency's Confidential Information and any Deliverables for which Agency has made payment in whole or in part, and subject to Contractor's obligations to provide Transition Services, Agency Data) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Any Deliverable returned or delivered to Agency pursuant to this Section may be provided without the warranties set forth in Section 11.2, unless the Deliverable is Accepted.
17. **Stop-Work Order.** Agency may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work required by this Contract for a period of up to ninety (90) Calendar Days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the Stop Work Order notice. Within a period of ninety (90) Calendar Days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Agency will either:
- 17.1. Cancel or modify the Stop Work Order by a supplementary written notice; or
- 17.2. Terminate the work as permitted by either the Default or the Convenience provisions of Section 16, Termination.
- 17.3. If the Stop Work Order is canceled, Agency may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete this

Contract and the Contract price by a duly executed amendment, inclusive of any ramp-up time required to for Contractor to resume Services.

18. COMPLIANCE WITH APPLICABLE LAW.

18.1. Compliance with Law Generally. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA); (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

18.2. Oregon False Claims Act. Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.

18.3. Changes in Law Affecting Performance. Each party hereby agrees to immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Contract. Each party shall monitor changes in federal and state laws, ordinances, and regulations applicable to its performance

hereunder, and will be deemed aware of such changes within thirty (30) Calendar Days of the enactment of any such change.

19. DISPUTE RESOLUTION.

19.1. **Litigation.** Any claim, action, suit, or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 19.1. In no event may this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

19.2. **Governing Law.** This Contract is governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

20. **Order of Precedence.** This Contract consists of the following documents that are listed in descending order of precedence:

The terms and conditions of this Contract, less its Exhibits;
Exhibit L, Security and Hosting Requirements/Confidentiality and Nondisclosure Agreement;
Exhibit K, System Requirements;
Exhibit B, Performance Standards;
Exhibit A, Statement of Work, including any attachments;
Exhibit C, Insurance;
Exhibit H, License for Contractor Intellectual Property, and Exhibit I, License for Third Party Intellectual Property;
Exhibit M, Payment Schedule;
Exhibit D, Contractor Tax Certification, and Exhibit E, Certification Statement For Independent Contractor, Contract;
Exhibit F, Contractor's Personnel / Authorized Representative / Key Persons; and
Exhibit G, Agency's Personnel / Authorized Representative.

- 20.1. The aforementioned Exhibits are by this reference incorporated into this Contract. To the extent provisions contained in more than one of the foregoing documents apply in any given situation, the parties agree: (i) to read such provisions together whenever possible to avoid conflict, and (ii) to apply the foregoing order of precedence only in the event of an irreconcilable conflict.
21. **Recycling.** To the maximum extent economically feasible in the performance of the Contract Contractor shall use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).
22. **Records Maintenance; Access.** Contractor shall maintain all financial records and other records relating to its performance under this Contract in accordance with generally accepted accounting principles and in such a manner as to clearly document Contractor’s performance. Contractor acknowledges and agrees that Agency, the Oregon Secretary of State, the federal government, and their duly authorized representatives will have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, and to related System components and tools (including hardware and software), to perform examinations and audits and make excerpts and transcripts, including System forensics. Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.
23. **Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 23, and provisions regarding Contract definitions, Warranty Periods and liabilities, independent Contractor status and taxes and withholding, maximum compensation), ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor’s representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, , order of precedence, maintenance and access to records, , notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
24. **Time Is of the Essence.** Contractor agrees that time is of the essence under this Contract for critical path Deliverables and all Milestones identified in the Statement of Work.
25. **Force Majeure.** Neither Agency nor Contractor will be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay is wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Both parties will, however, make all reasonable

efforts to remove or eliminate such a cause of delay or default and upon the cessation of the cause diligently pursue performance of their respective obligations under this Contract.

26. Notices. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing to Contractor at the address or number set forth on Exhibit F, and to Agency at the address or number set forth on Exhibit G, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section.

26.1.1. Any communication or notice delivered by United States Postal Service, first class mail postage prepaid, will be deemed given five (5) Calendar Days after mailing.

26.1.2. Any communication or notice delivered by facsimile will be deemed given when the transmitting machine generates receipt of the transmission. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to the Agency Authorized Representative.

26.1.3. Any communication or notice delivered by email will be deemed given when the recipient responds with a receipt, which may be auto-generated. To be effective against Agency, such email transmission must be confirmed by telephone notice to the Agency Authorized Representative.

26.1.4. Any communication or notice by personal delivery will be deemed given when actually received by the appropriate Authorized Representative.

27. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

28. Counterparts. This Contract may be executed in several counterparts, all of which when taken together constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed constitutes an original.

29. Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Services required by this Contract or assign or transfer any of its interest in this Contract without Agency's prior written consent which will not unreasonably withheld. Agency consent to a subcontract or assignment does not relieve Contractor of any of its duties or obligations under this Contract. Subcontracts which must be reviewed and consented to by Agency.

29.1.1. Any proposed use of a subcontractor which is located outside the United States must be called to the specific attention of Agency. All Services must be performed by staff physically located within the United States or its territories.

29.1.2. The assignment of this Contract in whole or in part to a successor organization by merger or acquisition does not require the consent of the other. Contractor is also permitted to assign its rights to payments without obtaining Agency's consent.

30. **Successors and Assigns.** The provisions of this Contract will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

31. **Intended Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

32. **Waiver.** The failure of either party to enforce any provision of this Contract or the waiver of any violation or nonperformance of this Contract in one instance will not constitute a waiver by the party of that or any other provision nor will it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Contract will bind either party unless in writing and signed by both parties and, with respect to Agency's waiver or consent, all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given.

33. **Headings.** The headings in this Contract are included only for convenience and do not control or affect the meaning or construction of this Contract.

34. **Integration.** This Contract and attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY STATE APPROVALS.

(SIGNATURE BLOCKS HERE.)

EXHIBIT A
STATEMENT OF WORK

Tasks and Deliverables referenced in the Contract Terms and Conditions:

Deliverables:

- Project Implementation Plan and Schedule
- Detailed Requirements.
- Systems Architecture Document
- System Test Documentation and Results Report
- User Acceptance Test Plan
- UAT Test Results Report
- Test Environment
- Production Environment

Tasks and project stages:

- System Testing Task
- User Acceptance Testing Task
- Production Pilot(including Implementation Pilot site)
- Implementation Task
- System Implementation (including System Stabilization period)
- User Training
- Technical Training and Knowledge Transfer

Data Storage

Exhibit B

Performance Standards

Performance Standards and Service Level Agreements will be negotiated by the parties and included in the negotiated Contract. Agency assumes that this Exhibit B will address the issues referenced below and all Service Level Agreements will be effective no later than the completion of the Implementation Task.

Contractor shall, at all times, comply with all System and operational performance requirements and expectations specified in the Contract, including all System Requirements.

1. Overview

1.1 Assessment of Damages

- 1.1.1 The parties agree that Contractor's failure to meet the performance metrics and Service Level Agreements stated in Exhibit A and this Exhibit B will result in damage to Agency. Where actual damage will be difficult to determine, Contractor shall pay to the State of Oregon, not as a penalty but as liquidated damages, the amounts specified in this Exhibit B as liquidated damages.
- 1.1.2 The amounts stated for each occurrence of each performance failure define the maximum liquidated damages due from Contractor. Liquidated damages claimed will be adjusted downward to eliminate any proportion of the damage caused by Agency's failure to meet its contractual responsibility.
- 1.1.3 The damage remedies stated in this Exhibit B are in addition to any other remedy for damages provided in the Contract. If Agency recovers actual damages in addition to liquidated damages, Agency will reduce such actual damages by the amounts received as liquidated damages for the same events causing the actual damages.
- 1.1.4 **Cure Period.** For performance requirements subject to a cure period, the Agency Project Manager will provide written notification of each failure to meet a performance requirement. Unless otherwise specified, Contractor will have five (5) Business Days, from the date of receipt of the written notification to perform to specifications to cure the failure. The State of Oregon may approve additional days at its discretion.
- 1.1.5 In the event of Contractor's failure to meet a performance metric or Service Level Agreement in either Exhibit A or Exhibit B, Agency may at its option:
 - a. Assess and withhold from payments due Contractor under this Contract the amounts due for any damages or liquidated damages specified in this Exhibit B;
 - or

- b. Make immediate demand on Contractor for payment of the damages and liquidated damages specified in this Exhibit B; or
 - c. During the Operations & Maintenance period, accept a credit for Change Order services in lieu of assessing liquidated damages or damages for the following Service Level Agreements: System Availability, System Response Time, Defect Service Level Agreement. The credit will be equal to the value of the liquidated damages.
- 1.1.6 Notice. Agency will provide written notification of the intent to assess damages agreed upon in this Exhibit B ten (10) Calendar Days prior to assessment. The Agency Project Manager will notify Contractor, in writing, of any claim for damages or liquidated damages pursuant to this provision at least fifteen (15) Calendar Days prior to the date Agency deducts such sums from money payable to Contractor.
- 1.1.7 Payment. Amounts due Agency from assessment of damages or liquidated damages are due within 30 (thirty) Calendar Days of demand by Agency unless Agency has exercised its option to deduct or accept as credit the amounts due from any money payable to Contractor pursuant to this Contract.
- 1.1.8 Agency may, at its sole discretion, return a portion of collected damages as an incentive payment to Contractor for prompt and lasting correction of performance deficiencies.
- 1.2 Monitoring and Reporting
 - 1.2.1 Monitoring and audit by Agency. All performance metrics and Service Level Agreements described in this Contract are subject to monitoring and audit by Agency. Agency reserves the right to monitor performance or audit records at any time and may exercise such option, at its discretion, without notice. Agency must be able to access such information online and in real-time, where feasible, at any time during the term of this Contract.
 - a. Contractor shall provide tools and access in order for Agency to complete monitoring and audit activities. If Contractor fails to provide tools or access within five (5) Business Days of Agency request, Contractor will be deemed to have missed all unmonitored and unaudited performance metrics and Service Level Agreements for the month in which the failure to provide tools or access occurred.
 - 1.2.2 Contractor shall measure and report upon its performance against the performance metrics and Service Level Agreements as of the Effective Date, unless a different date for a specific metric is stated in the Contract or approved in writing by the Agency Authorized Representative. Contractor shall provide and implement measuring tools to measure and report upon each performance metric and Service Level Agreement on a monthly basis. These reports must show at least performance for the period being reported and trends over time.

- 1.2.3 Contractor shall provide reports on its performance either as part of the periodic status reports required under specific Tasks or, if no status report is required or Agency approves in writing, under separate cover on a schedule and in a form approved by Agency.
- 1.2.4 When Contractor is required to submit periodic status reports, and no reporting schedule is otherwise set in the Statement of Work or approved in writing by Agency, Contractor shall provide (i) a set of hard and a set of electronic reports on or before the tenth (10th) Business Day of the month following the month in which performance is measured, and (ii) identification of any damages payable to Agency for failure to meet a performance metric or Service Level Agreement.
- a. If Contractor fails to report on its actual performance by the fifteenth (15th) Business Day of the month in which the report is due, Contractor will be deemed to have missed all unreported metrics and service levels for the month.
- 1.3. Modifications to Service Level Agreements
- 1.3.1 Agency and the Contractor may add or modify performance metrics and Service Level Agreements in accordance with the Change Control process in Section 17.15 of this Contract. The parties agree that:
- a. Changes to service levels will be established based on current performance (at least three (3) months of service metrics) and business requirements, and
- b. Additional requirements may be added based on business requirements.
- 1.3.2 Notice; Limit. Agency will send written notice to Contractor at least thirty (30) Calendar Days prior to the date that a modification to a performance metric or a Service Level Agreement is to be effective, unless a shorter time frame is agreed upon by Contractor. Agency may send such a notice (which notice may contain multiple changes) not more than once every ninety (90) Calendar Days.
- 1.3.3 Notwithstanding the foregoing, Agency may delete service levels at any time during the Term by sending written notice to Contractor.

2. Final Acceptance

2.1 Performance Requirement

It is critical to the State's interest that Final Acceptance of the System occur on or before the date agreed to in the Statement of Work.

Contractor's capability to meet this date will be determined by Agency following the conclusion of the Implementation Task, in accordance with Section 2.7 of this Contract. If Agency determines that the System is not ready for Final Acceptance on the specified

date, then assessments will be made until such time as Agency determines that either a) Final Acceptance may occur, or b) that Contractor is in default.

2.2 Damages

If Final Acceptance does not occur on or before the date agreed to in the current Accepted Project Implementation Plan and Project Schedule, then Contractor will be liable for all additional project costs incurred by Agency beyond the specified Final Acceptance date that would not have otherwise been incurred. These project costs include:

- 2.2.1 The cost of extending other Contractors performing project-related work for the State;
- 2.2.2 The cost of extending the Agency project team as required to assess the System for Final Acceptance after the initial Final Acceptance assessment.

3. System Availability

3.1 Performance Requirement

Upon completion of the Implementation Task, the System must be available 24 hours a day, 7 days a week, with the exception of approved maintenance outage time periods.

3.2 Liquidated Damages

_____ dollars (\$____) per working hour, or any part of a working hour, as liquidated damages if the System is not available. Total liquidated damages for System Availability will not exceed, per outage incident:

- 3.2.1 _____ dollars (\$____) in week one.
- 3.2.2 _____ dollars (\$____) in week two.
- 3.2.3 _____ dollars (\$____) per week thereafter.

4. System Response Time

4.1 Requirement

Upon completion of the Implementation Task, the System must meet the System response time requirements defined in the Task __ Technical Services Requirements.

4.2 Damages

Information for calculating the daily average response time will be reported on a frequency agreed upon by Agency, and calculated by dividing the total daily end-user response time by the daily quantity of end-user transactions, excluding the response time and quantity of transactions for the 2% of the transactions that are the slowest.

If the System does not average 2 seconds or less response time on a given Calendar Day, Agency will notify Contractor of the need to cure, and Contractor shall correct the problem within seven (7) Calendar Days, unless given an extension by Agency. Contractor shall submit daily reports to Agency for average response times, from the date of Agency's cure notice until further notice by Agency.

For each Calendar Day following the expiration of the cure period that the System does not meet the response time requirements, and until the average response time requirement is met for a period of 5 (five) consecutive Business Days ("correction"), Contractor will be assessed as liquidated damages the dollar amounts outlined in the table below. The assessed amount will be dependent on the number of times liquidated damages have already been assessed (Nbr of Times LD AssessedZ) for failure to meet the response time requirements and the average response time measured on that day.

Nbr of Times LD AssessedZ	Average Response Time		
	Greater Than 2 Seconds but Less Than 3 Seconds	3-6 Seconds	Greater Than 6 Seconds
1 – 3	\$ _____	\$ _____	\$ _____
4 – 6	\$ _____	\$ _____	\$ _____
Greater Than 6	\$ _____	\$ _____	\$ _____

Z This is the cumulative number of times that liquidated damages have been assessed Contractor for not meeting the response time requirements. After each "correction," and using the process outlined above, liquidated damages for not meeting response time requirements may be assessed again (after the notice and cure period as outlined above), if subsequent failures to meet response time requirements occur. Each time liquidated damages are assessed, 1 is added to the "Nbr of Times LD Assessed." The cumulative "Nbr of Times LD Assessed" does not get reset to 0.

These liquidated damages related to System Response Time will not exceed _____ dollars (\$_____).

If the System fails to meet both System Availability requirements and System Response Time requirements, Contractor will only be liable for liquidated damages for failure to meet System Availability requirements.

5. Key Persons

5.1 Requirement- See Contract Section 4.1.

5.2 Liquidated Damages

Failure to comply with Contract Section 4.1 will result in assessment of liquidated damages as determined by the Agency's Authorized representative, up to a maximum of _____ dollars (\$____) per occurrence, taking into consideration the person's role and the expected impact on the System development schedule or ongoing operations.

6. Security and Hosting Requirements Compliance

6.1 Requirement

It is critical to the State's interest that the System and Contractor's staff, agents, and subcontractors comply with Security and Hosting Requirements at all times.

6.2. Damages

If the System does not meet the Security and Hosting Requirements, Contractor shall pay liquidated damages in the amount of _____ dollars (\$____) per Calendar Day per violation until Agency determines the violation has been corrected and that the System meets the Security and Hosting Requirements.

If Contractor, including its employees, agents, and subcontractors, fails to comply with Security and Hosting Requirements, Contractor will pay liquidated damages in the amount of _____ dollars (\$____) per Calendar Day per violation until Agency determines the violation has been corrected and that the System meets the Security and Hosting Requirements.

In addition to the liquidated damages due Agency, Contractor shall be liable to Agency for all penalties and fines assessed by the State or federal government for violation of any Security and Hosting Requirement, and all third party claims.

7. Defect Service Level Agreement

This Defect Service Level Agreement will be negotiated by the parties and included in the negotiated Contract. Agency assumes that the Defect Service Level Agreement will address the issues referenced below, apply to all System Defects, and be effective no later than the completion of the Implementation Task.

7.1 Defect Level Resolution Times

7.2 Defect Resolution Process

- 7.3 Defect Resolution Time Period Measurement
- 7.4 Quality Measures
- 7.5 Reporting and Assessment of Liquidated Damages

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Exhibit C INSURANCE-

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Contract, and shall maintain it in full force and at its own expense throughout the duration of this Contract, and as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage must be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

1. INSURANCE REQUIRED.

1.1 Workers' Compensation & Employers' Liability.

All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Contract, including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

1.2 Professional Liability.

Contractor shall provide Professional Liability insurance including:

1. Technology Errors and Omissions related to the professional services and products provided under this Contract in an amount of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, and
2. Network Security/Privacy Breach of Agency Data in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, and
3. Coverage for regulatory fines and fees imposed against Agency due to failures in products and Services provided under this Contract in an amount of not less than \$500,000 per occurrence.

Coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability. Coverage must extend to business associates and independent contractors providing professional services on behalf of or at the direction of Contractor. A primary policy or combination of a primary policy and excess policy shall be acceptable in order to meet the limits requirement.

1.3 Commercial General Liability.

Contractor shall provide Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance must include personal injury liability, products and completed operations, and contractual liability coverage, in each case arising out of Contractor's negligence. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

1.4 AUTOMOBILE LIABILITY INSURANCE.

Contractor shall provide Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.

2. ADDITIONAL INSURED.

The Professional Liability insurance and Commercial General Liability insurance required under this Contract must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract.

3. TAIL COVERAGE.

If any of the required insurance is on a claims-made basis and does not include an extended reporting period of at least 24 (twenty-four) months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Contract, for a minimum of 24 (twenty-four) months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all Warranty Periods provided under this Contract.

4. CERTIFICATE(S) AND PROOF OF INSURANCE.

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods or performing any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that Contractor will pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage will be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 (twenty-four) months is provided on all claims made policies or that tail coverage is provided. As proof of insurance Agency has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

5. NOTICE OF CHANGE OR CANCELLATION.

Contractor or its insurer must endeavor to provide at least 30 (thirty) Calendar Days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

6. INSURANCE REQUIREMENT REVIEW.

Contractor agrees to periodic review of insurance requirements by Agency under this Contract and to meet updated requirements as mutually agreed upon by Contractor and Agency.

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EXHIBIT D
CONTRACTOR TAX CERTIFICATION

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor tax identification numbers are true and accurate.

Federal Tax Number _____

Oregon Tax Number _____

Contractor Signature _____ Date _____

EXHIBIT E
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist.
(Please check four or more of the following):

- ☐ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
- ☐ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
- ☐ C. Telephone listing used for the business is separate from the personal residence listing.
- ☐ D. Labor or services are performed only pursuant to written contracts.
- ☐ E. Labor or services are performed for two or more different persons within a period of one year.
- ☐ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature

Date

EXHIBIT F
CONTRACTOR'S PERSONNEL

Authorized Representative:

Name and Title:
Phone:
Email:
Mailing Address:

Project Manager:

Name and Title:
Phone:
Email:
Mailing Address:

Other Key Persons:

Name and Title:
Phone:
Email:
Mailing Address:

EXHIBIT G
AGENCY PERSONNEL

Authorized Representative:

Name and Title:
Phone:
Email:
Mailing Address:

Project Manager:

Name and Title:
Phone:
Email:
Mailing Address:

EXHIBIT H
SUBSCRIPTION AND HOSTING SERVICES, LICENSE FOR CONTRACTOR INTELLECTUAL PROPERTY

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EXHIBIT I

LICENSE FOR THIRD PARTY INTELLECTUAL PROPERTY

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EXHIBIT J

Reserved.

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EXHIBIT K
SYSTEM REQUIREMENTS

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EXHIBIT L

**SECURITY AND HOSTING REQUIREMENTS/CONFIDENTIALITY AND NONDISCLOSURE
AGREEMENT**

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EXHIBIT M
PAYMENT SCHEDULE

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