

Open Source Legal and Procurement Analysis: WORK PLAN

Business Opportunity

Background: Open Source Software (“OSS”) is built upon the principle that end users should be provided the source code of information systems programs and should be free to use, share, modify and enhance software products. OSS development and distribution provide viable information systems solutions. OSS is maturing in its diversity of offerings and technical functionality. It is having a growing impact and increasingly noticeable effect on the software industry. Eventually, open source (“OS”) solutions will likely compete with a broad range of closed source (“CS”) products in all markets. In order to ensure that the State of Oregon is able to take full advantage of OS development and distribution, the State Chief Information Officer (“CIO”) and the Chair of the CIO Council are sponsoring and promoting the Open Source Community of Practice (“OS CoP”). The CIO Management Council (“MC”) acts as the Steering Committee for the OS CoP. The full CIO Council will ratify the work of the OS CoP.

The purpose of the OS CoP is to:

- (1) Strategically engage the state (government) with the OS community;
- (2) Recommend standards, policies and methodologies for OSS evaluation, acquisition and use;
- (3) Consider OS opportunities for accomplishment of the mission of state government; and
- (4) Achieve the State’s business objectives in compliance with State of Oregon law and regulation.

The OS CoP has launched two (2) initiatives that are currently active:

- (1) Developing a high level inventory to provide a glimpse into the current usage of OSS throughout state government; and
- (2) Developing best practice processes and methodologies that agencies can use to evaluate desktop software solutions, including OSS.

Opportunity: The CIOMC has approved the OS CoP’s consideration of a third OS initiative: an OS legal and procurement analysis (“LPA”). The purpose of the LPA is two-fold:

- (1) Develop information and data that will augment two (2) other ongoing OS initiatives, and
- (2) Develop recommendations for standard policies and methodologies concerning the development, distribution and acquisition of OS solutions that are in compliance with State of Oregon law and regulation.

Vision: Establish a relevant factual basis for the promulgation of policy and administrative rules concerning the legal acquisition, procurement, use and distribution of OSS.

Work Plan Scope: Like CS software licenses, OSS licenses pose their own set of legal, business and technical issues for the users and the organizations employing these products. Accordingly, the LPA must develop all information and data needed for the stakeholders to understand what is required to legally acquire, procure, use and distribute OSS in the best manner to achieve enterprise business and information resource management objectives.

<p>General Business Objective</p>	<p>Form a collaborative team of business and IT subject matter experts comprised of a representative cross-section of state agency stakeholders, including the State Procurement Office (“SPO”) and Department of Justice (“DOJ”); through which the State CIO and CIO Council may obtain answers to critical questions concerning the acquisition, procurement, use and distribution of OSS. The LPA team will follow applicable guidelines from State of Oregon law and regulation to develop work products in consonance with business objectives concerning best value and total cost of ownership.</p>
<p>Specific LPA Objectives</p>	<p>(1) Understand the distinctions between OS and CS products and their related business models in general; and in particular with respect to their software licenses;</p> <p>(2) Concerning software acquisitions, understand when software, regardless of initial cost and its nature as OS or CS, becomes a state asset whose use, continued maintenance and support and any further development may become a subject for procurement;</p> <p>(3) Concerning software procurements, regardless of the source, understand the full range of options available in the public procurement process through which the desired software may be acquired;</p> <p>(4) Identify all possible legally compliant best value solicitation models for planned software procurements that:</p> <ul style="list-style-type: none"> (i) take into account the relevant legal, business and technical risks attendant to the desired acquisition: and (ii) evaluate price against the analytical backdrop of total cost of ownership; and <p>(5) Identify what specific authorized means state agencies may use to collaborate, or otherwise interact, with the OS community in general; and in particular how they may reach out to OS developers and suppliers to encourage participation in planned software acquisitions and procurements.</p> <p>The connection between a planned deliverable and one or more of these objectives is reflected in bracketed Arabic numerals placed next to the affected deliverable in the “Deliverable Schedule” section of the work plan, e.g., “[1]” for objective 1, “[1,2]” for objectives 1 and 2, etc.</p>
<p>Outcomes</p>	<ul style="list-style-type: none"> ▪ Common Understanding of OS business models and OSS licenses. ▪ Clear policy recommendations for OSS acquisition, procurement, use and distribution in compliance with State of Oregon law and regulation, and in consonance with business objectives concerning best value and total cost of ownership. ▪ Outcomes documented in specific deliverables listed in deliverable schedule, below.
<p>Time Commitment</p>	<p>TBD</p>

	Deliverable	Responsible Party	Milestone
Deliverable Schedule	<p>A. Conduct Kick-Off with LPA Workgroup to discuss draft Work Plan and creation of a list of issues / questions for resolution in connection with the stated objectives</p>	LPA Workgroup: ALL	July 3, 2007
	<p>B. Detailed Work Plan with responsible parties, milestones, fully defined Common Glossary of Terms, and list of issues / questions for resolution in connection with the stated objectives. [1-5]</p>	<p>LPA Workgroup: ALL</p> <p>- Draft Definitions: See definitions section.</p> <p>- Approved Definitions: ALL</p>	July 20, 2007
	<p>C. Report concerning OS as a business model. [1]</p> <ul style="list-style-type: none"> -What is OS? -How is it different from CS? -What are its distribution / supply models? -What are its possible benefits in general, including without limitation the benefit from access to code? -What are its possible benefits to Oregon Government in particular? -Does Oregon Government have the authority to acquire and use OSS differently from CSS? If so, should it? Why? -When and how should sustainability, risk and information security factor into the assessment of OSS versus CS alternative products? 	<p>LPA Workgroup</p> <p>- Draft Report: Nick Betsacon, Jack Doyle, Dennis Wells, Kevin Erickson, Mike Lamon, Laer Haider</p> <p>- Approved Report: ALL</p>	September 10, 2007

Deliverable	Responsible Party	Milestone
<p>D. Report concerning OSS licensing types and categories [1, 2]</p> <ul style="list-style-type: none"> -What are the OSS license categories? -What are the OSS license types within each category? -What are the obligations and responsibilities attendant to each license type, and the events that trigger them? -What actions evidence the act of “distribution” in connection with these licenses? 	<p>LPA Workgroup</p> <ul style="list-style-type: none"> - Draft Report: Nick Betsacon, Jacob Carroll - Approved Report: ALL 	<p>November 2007</p>
<p>E. Report reflecting the: incidence of OSS in Oregon Government; likely agency practices regarding the typical acquisition and use of OSS; and current law, administrative rules and policy affecting OSS acquisition, procurement, use and distribution. [3-5]</p> <ul style="list-style-type: none"> -What is the current incidence of OSS in Oregon State Government? -What are the likely agency practices regarding the typical acquisition and use of this OSS? -What are the current laws, administrative rules and policies affecting OSS acquisition, procurement, use and distribution? -Under this legal authority, what are the authorized scenarios that comprise the full range of actions for acquiring or procuring OSS, and when and how must DOJ, SPO, EISPD, and others become involved in OSS acquisition or procurement? -Are changes to the legal authority affecting OSS acquisition and use required? If so, what and for what purpose(s)? 	<p>LPA Workgroup</p> <ul style="list-style-type: none"> - Draft Report: Nick Betsacon, Jacob Carroll, Melissa Canfield, Mike Lamon - Approved Report: ALL 	<p>November 2007</p>

	Deliverable	Responsible Party	Milestone
	<p>F. Final Report reflecting findings and conclusions depicted in Reports C to E, and policy recommendations concerning OSS acquisition, procurement, use, distribution and licensing. [1-5]</p> <p><i>-Combine findings and conclusions from Reports C through E.</i></p> <p><i>-Develop relevant policy recommendations concerning OSS acquisition, procurement, use, distribution and licensing.</i></p>	<p>LPA Workgroup</p> <p>-Draft Report: Nick Betsacon, Jack Doyle, Laer Haider, Scott Riordan</p> <p>-Approved Report: ALL</p>	<p>December 31, 2007</p>
	Additional Deliverables	LPA Workgroup: TBD	TBD
Reporting	<ul style="list-style-type: none"> • Status updates on LPA Workgroup progress to OS CoP Chair on at least a monthly basis. • Ad Hoc reporting at OS CoP Chair's request 		
Key Assumptions	<ul style="list-style-type: none"> • State executive-level sponsorship remains committed to exploring OS alternatives now and into the future, even as executive leadership changes. • All state agencies are committed to considering the acquisition, procurement, use and distribution of OSS through means legally compliant with State of Oregon law and regulation, and in consonance with business objectives concerning best value and total cost of ownership. 		

Proposed Glossary of Terms to Define:

- **Acquisition:** The general act of acquiring or obtaining some temporary or permanent means of access to and control over an object or service, or both.
- **Best Value:** A particular item's value that reflects the perceived best trade-off between the item's Total Cost of Ownership and all relevant aspects of the item's performance; as assessed pursuant to ORS 279A.015(5) and OAR 125-246-0120(5).
- **Closed Source:** Particular Software for which the source code is not normally available to the general public. The concept of Closed Source allows Software developers to establish, maintain and control an exclusive proprietary interest in the source code that comprises particular Software.
- **Distribution Model:** The manner and means through which a product or service, or both, is made available to the public.
- **Freeware:** Closed and Open-Source Software, offered under a standard commercial license that can be downloaded, used and copied with little or no restriction in which the author does not provide access to the source code.
- **Gift:** The act of voluntarily transferring property to another made gratuitously and without consideration. Consideration is some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered or undertaken by another.
- **Intellectual Property:** A category of intangible rights protecting commercially valuable products of the human intellect comprised primarily of trademark, copyright, and patent rights, but also includes trade-secret rights, publicity rights, moral rights, and rights against unfair competition. (Would be interested in others opinion of whether we should drop the word 'commercially'. Especially considering our next definition of Open Source)
- **Open Source:** Particular Software for which the source code is normally available to the general public with limited intellectual property restrictions, i.e., licensing. The concept of Open Source allows users to freely redistribute the software, and its available source code, without modification; or to modify the subject software content in consonance with applicable licensing permissions.
- **Open Standards:** A publicly available standard having various use rights associated with it. The term "open" is sometimes restricted to royalty-free technologies. The term "standard" is sometimes restricted to technologies approved by formalized committees open to participation by all interested parties. These committees usually operate on a consensus basis. Open Standards specifying formats are sometimes referred to as "open formats."
- **Open Systems:** A computing and networking system or systems comprised of interacting software, hardware, and human components with well-defined, publicly available interfaces maintained by a consensus process.

- **Procurement:** The particular Best Value acquisition of goods or services, or both, conducted in compliance with applicable State of Oregon law and regulation concerning competitive public purchasing.
- **Software:** Computer programs comprised of a collection of instructions and data that describe tasks to be performed by *computers*. The term includes *application software*, which perform productive tasks for users, *system software*, which interface with hardware to run the necessary services for user-interfaces and applications, and *middleware* which controls and co-ordinates distributed systems.
- **Software License or License:** Permission to use Software under certain terms that would be unlawful without said permission. Ownership in the Software is not transferred to the licensee.
- **Total Cost of Ownership:** The sum of all direct and indirect costs related to the ownership or operation, or both, of Software. The concept is based upon full cost accounting that includes the initial cost of purchase and subsequent costs concerning all aspects related to the further use and maintenance of the Software.

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