

**ATTACHMENT B – WORK ORDER CONTRACT TERMS AND CONDITIONS
FOR PRICE AND SERVICES AGREEMENT # _____**

This work order contract (hereinafter “Contract”) is entered into on the Effective Date (defined below) by and between _____ (the “Authorized Purchaser”), and _____, a _____ corporation (“Contractor”).

RECITALS

- A. Authorized Purchaser desires to engage Contractor to provide Services to enable Authorized Purchaser to achieve specific business and governing entity mission objectives.
- B. Contractor is a successful Proposer in connection with the RFP # 102-1473-08, and has a Price and Services Agreement with the State of Oregon by and through its Department of Administrative Services.
- C. Contractor desires to perform the Services for the State of Oregon and its Authorized Purchasers.

Authorized Purchaser and Contractor agree as follows:

I. DEFINITIONS.

“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 D. Authorized Purchaser’s Authorized Representative is the person so identified in Exhibit E.

“Confidential Information” is defined in Section 8.1.

“Contract” means all terms and conditions herein and all Exhibits attached hereto including Price and Services Agreement # _____.

“Contractor Intellectual Property” means any pre-existing intellectual property, that is owned by Contractor and developed independently and separately from the Services prior to the effective date of this Agreement, during the term of this Agreement, including any renewals, and after the termination of this Agreement. For clarification purposes, pre-existing IP includes, but is not limited to, Contractor’s pre-existing tools, processes, methodologies, copyrighted research materials, proprietary research data, and proprietary databases that is owned by Contractor outside of the Contract.

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

“Deliverables” means all items that Contractor is required to deliver to Authorized Purchaser under this Contract, including Developments.

“Delivery Schedule” means the schedule set forth in the Statement of Work that includes the completion date of each Milestone and the delivery date for each Deliverable.

“Developments” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, knowhow, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor (either alone or with others) pursuant to the Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Developments shall not include any Third Party Intellectual Property or Contractor Intellectual Property.

“Documentation” means all documents, including documents that are Deliverables described in the Statement of Work.

“DOJ” means the State of Oregon acting through its Department of Justice. **Individual Work Order Contracts that exceed \$100,000 may require the Attorney General’s legal sufficiency approval.**

“Effective Date” means the date on which this Contract is fully executed and approved in accordance with applicable laws, rules and regulations.

“Final Acceptance” is defined in Section 2.5.

“Intellectual Property Rights” is defined in Section 11.2.

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

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

“Milestone” means a specific group of tasks or Deliverables identified as a Milestone in the Statement of Work.

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

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

“RFP” means the Request for Proposal.

“Schedule of Deliverables” means a document that describes each Deliverable, measurable attributes of each Deliverable, Milestones with identification of the Services activities that are associated with them, and a planned completion date for each Milestone and Deliverable.

“Services” means all services to be performed under this Contract.

“Services Retention Amount” is defined in Section 6.3.1.

“Statement of Work” means the Schedule of Deliverables, the payment schedule, and any other items as agreed by the parties, all attached hereto as Exhibit A.

“Third Party Intellectual Property” means any intellectual property owned by parties other than Authorized Purchaser or Contractor.

“Warranty Period” is defined in section 2.5.

II. SCOPE OF SERVICES.

2.1 Performance and Delivery. Contractor shall perform the Services as set forth in the Statement of Work, in accordance with the Delivery Schedule and the standards and methodologies set forth in the Statement of Work.

2.2 Responsibilities of Authorized Purchaser. If this Contract requires Authorized Purchaser to provide Services, and Authorized Purchaser fails to provide the requisite quality or quantity of such Services, or fails to provide such Services in a timely manner, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by Authorized Purchaser's failure. Authorized Purchaser may delay Contractor's performance under the Work Order Contract for up to ninety (90) calendar days, at no additional cost to Authorized Purchaser, if Authorized Purchaser experiences delays resulting from Authorized Purchaser's purchase, installation, configuration or operation of hardware.

2.3 Delivery and Review of Deliverables.

2.3.1 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. Interim delivery dates, both critical and non-critical, are set forth in the Statement of Work and are subject to Authorized Purchaser performing its responsibilities in a timely manner.

2.3.2 Contractor shall provide written notice to Authorized Purchaser upon delivery of a completed Deliverable to Authorized Purchaser. By no later than (i) 15 calendar days after receipt of such notice, or (ii) the date set forth in the

Delivery Schedule for Authorized Purchaser's review, Authorized Purchaser shall determine whether the Deliverable meets the specifications and performance standards set forth in the Statement of Work.

2.3.3 If the Authorized Purchaser determines that a Deliverable does not meet the specifications or performance standards, Authorized Purchaser shall notify Contractor in writing of Authorized Purchaser's rejection of the Deliverable, and describe in reasonable detail in such notice the Authorized Purchaser's basis for rejection of the Deliverable. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 calendar day period, modify or improve the Deliverable at Contractor's sole expense to ensure that the Deliverable meets such specifications or performance standards, and notify the Authorized Purchaser in writing that it has completed such modifications or improvements and re-tender the Deliverable to Authorized Purchaser. Authorized Purchaser shall thereafter review the modified or improved Deliverable within 15 calendar days of receipt of the Contractor's delivery of the Deliverable. Failure of the Deliverable to meet the specifications and performance standards after the second set of acceptance tests shall constitute a default by Contractor. Upon such default, Authorized Purchaser may either (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this section 2.3.3, or (ii) notify Contractor of such default and instruct Contractor to cease work on the Deliverable, in which case Contractor shall refund to Authorized Purchaser all amounts paid by Authorized Purchaser related to such Deliverable. Such refund shall be in addition to, and not in lieu of, any other remedies Authorized Purchaser may have for Contractor's default.

2.4 [RESERVED]

2.5 Final Acceptance. Final Acceptance means Authorized Purchaser's Acceptance of all Deliverables including Change Orders, if any.

2.6 Warranty Period. means the period that begins on the Effective Date of this Contract and ends 180 calendar days after the date of Final Acceptance.

III. CHANGE CONTROL PROCEDURES.

3.1 Written Change Requests. Either Authorized Purchaser or Contractor may request a change to this Contract, including all Exhibits hereto, by submitting a written change request describing the change requested. Authorized Purchaser's and Contractors' Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

3.2 Analysis of Change Requests; Change Orders. The party to whom the written change request has been submitted, if it has not been rejected pursuant to Section 3.1, shall analyze such change request to determine the effect that the implementation of the change will have on the Statement of Work. If any change is approved, the party that submitted the request for the change shall prepare a written change order, detailing all modifications to the scope, price, Delivery

Schedule or other terms (the "Change Order"). A Change Order at a minimum shall contain the following information:

3.2.1 The date of issuance of the Change Order;

3.2.2 A detailed description of the Services to be performed under the Change Order;

3.2.3 The particular specification or matter set forth in the applicable Statement of Work which will be altered and the precise scope of that alteration;

3.2.4 The cost of the Services to be performed pursuant to the Change Order; and

3.2.5 The cumulative cost of all Change Orders previously issued.

A Change Order shall alter only that portion of the Statement of Work to which it expressly relates and shall 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 shall be performed pursuant to the Change Order and no payment shall be made on account of the Change Order until the Change Order is fully executed and approved as set forth in Section 19.15.

3.3 Payments. Subject to the foregoing Sections of this Article 3 and performance of the Services, Authorized Purchaser shall pay for Services performed pursuant to a Change Order in accordance with the acceptance and payment procedures set forth in this Contract.

IV. CONTRACTOR'S PERSONNEL.

4.1 Project Manager. Contractor shall designate one of the Key Persons as Project Manager for the Services. The Project Manager shall be familiar with Authorized Purchaser's business operations and objectives, shall perform the Services in accordance with the warranties set forth in Article IX of this Contract. The Project Manager will participate with Authorized Purchaser in periodic review sessions and will provide at Authorized Purchaser's request detailed progress reports that identify completed tasks and the status of the remaining Services.

4.2 Contractor's Employees and Subcontractors. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by Authorized Purchaser. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in Article IX of this Contract.

4.3 Key Persons. Contractor acknowledges and agrees that Authorized Purchaser selected Contractor, and is entering into this Contract, because of the

special qualifications of Contractor's Key Persons identified in Exhibit D. 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 Authorized Purchaser. Further, Contractor shall not re-assign or transfer the Key Persons to other duties or positions such that the Key Persons are no longer available to provide the Authorized Purchaser with their expertise, experience, judgment, and personal attention, without first obtaining the Authorized Purchaser's prior written consent to such re-assignment or transfer, which Authorized Purchaser shall not unreasonably withhold. Notwithstanding the foregoing, Contractor may replace Key Persons without Authorized Purchaser's consent in the event any Key Persons are no longer available due to death, illness or termination of employment with Contractor. In the event Contractor requests that the Authorized Purchaser approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons due to death, illness or termination of employment with the Contractor, the Authorized Purchaser shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Persons. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced, and shall perform the Services in accordance with the warranties set forth in Article IX. Any replacement personnel approved by Authorized Purchaser shall thereafter be deemed a Key Person for purposes of this Contract and Exhibit D shall be deemed amended to include such Key Person. Contractor shall not charge Authorized Purchaser and Authorized Purchaser shall not pay for any proposed replacement Key Person while such replacement acquires the necessary skills and project knowledge to proceed with the Services required hereunder; however, such period of non-charge may not exceed twenty-eight (28) calendar days, but shall last for a minimum of fourteen (14) calendar days, after which time Authorized Purchaser shall pay for such Key Person if Contractor demonstrates to Authorized Purchaser's satisfaction that such replacement has acquired the necessary skills and project knowledge to proceed with the Services required hereunder.

V. TERM.

This Contract shall be effective on the Effective Date, and shall expire on the later of the expiration of any Warranty or that date set forth in the Work Order.

VI. PAYMENT.

6.1 Maximum Payment Amount. Notwithstanding any other provision of this Contract to the contrary, the maximum, not-to-exceed compensation that Authorized Purchaser will pay to Contractor is set forth in the applicable Statement of Work (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. Payment for Services. Subject to Sections 6.3 and 6.5, Authorized Purchaser shall pay Contractor for each Deliverable delivered pursuant to the Statement of Work and accepted by Authorized Purchaser the lesser of (a) the number of Contractor hours devoted to that Deliverable for each Contractor employee or subcontractor multiplied by the applicable hourly billing rate identified in Exhibit A or (b) the "not-to-exceed" amount associated with that Deliverable set forth in the Statement of Work.

6.3 Retention Amount. Retention Amount for Services. Authorized Purchaser shall in all events be permitted to hold back an amount (the "Services Retention Amount") of not more than ten percent (10%) of any amount that is payable by Authorized Purchaser to Contractor,. Authorized Purchaser shall pay the then accrued Services Retention Amount to Contractor within thirty (30) days following Final Acceptance.

6.4 Expenses. Authorized Purchaser will not pay any expenses incurred by Contractor during the completion of the Services.

6.5 Invoices. Authorized Purchaser shall pay Contractor not more than once each month upon Contractor's submission of detailed invoices that set forth the Services performed and goods accepted by Authorized Purchaser. Such invoicing may be comprised of multiple invoices over the course of a given payment period and each shall comply with the requirements of Sections 6.2, 6.3, and 6.4 and shall describe Deliverables completed and all Services performed with particularity and by whom they were performed, including name and job title, reference to the specific activity in the Statement of Work, number of hours spent completing the Services Contractor shall request payment only for Services that represents completion of specific Milestones or Deliverables. Contractor shall submit invoices to Authorized Purchaser's Authorized Representative. Authorized Purchaser will have the right to review each such invoice for compliance with the requirements of this Section 6.5 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 Authorized Purchaser shall 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 19.15, 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, as it may be amended from time to time, in accordance with its terms.

VII. OWNERSHIP AND LICENSE IN DELIVERABLES.

7.1 Original Works.

All intellectual property rights in the Developments created by Contractor pursuant to the Contract shall be the exclusive property of Authorized Purchaser. All Developments authored by the Contractor under this Contract shall be deemed "works made for hire" to the extent permitted by the United States Copyright Act. To the extent Authorized Purchaser is not the owner of the intellectual property rights in such Development, Contractor hereby irrevocably assigns to Authorized Purchaser any and all of its rights, title, and interest in such Development. Upon Authorized Purchaser's reasonable request, Contractor shall execute such further documents and instruments reasonably necessary to fully vest such rights in Authorized Purchaser. Contractor forever waives any and all rights relating to such Development created pursuant to the Services, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

7.2. Contractor Intellectual Property. If intellectual property rights in the Development are Contractor Intellectual Property, Contractor hereby grants to Authorized Purchaser an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Authorized Purchaser's behalf, to fulfill the business objectives identified in this Purchase Order Contract and the Prices and Services Agreement.

7.3. Third Party Intellectual Property. To the extent Contractor has the authority, Contractor shall sublicense or pass through to Authorized Purchaser all Third Party Intellectual Property. Contractor represents and warrants that it has provided written disclosure to Authorized Purchaser of all Third Party Intellectual Property that must be independently licensed by Authorized Purchaser to fully enjoy the benefit of the Development. In the event Contractor failed to provide such written disclosure, Contractor shall secure on the Authorized Purchaser's behalf and in the name of and subject to the approval of the Authorized Purchaser, the Third Party Intellectual Property License sufficient to fulfill the business objectives identified in this Work Order Contract and the Prices and Services Agreement.

7.4 Further Assurances. Contractor shall execute any instruments and do all other things reasonably requested by Authorized Purchaser (both during and after the term of this Contract) in order to vest more fully in Authorized Purchaser any and all ownership rights in those items hereby transferred by Contractor to Authorized Purchaser. In the event Authorized Purchaser is unable, after reasonable effort, to secure Contractor's signature on any copyright registrations or documents or instruments necessary to evidence Authorized Purchaser's ownership rights in, or to evidence the transfer to Authorized Purchaser of ownership rights in, the Developments or other property, for any reason whatsoever, Contractor hereby irrevocably designates and appoints Authorized Purchaser and its duly authorized officers and agents as Contractor's agent and attorneyin fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the

prosecution and issuance of letters patent, copyright registrations, and other analogous protection thereon with the same legal force and effect as if executed by Contractor.

7.5 Disputes and Disclosures. In any dispute over ownership rights, Contractor shall have the burden of proving prior or independently developed rights in copyrightable code by clear and convincing proof.

7.6 No Rights. Except expressly set forth in this Contract, nothing in this Contract shall 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 Authorized Purchaser. Nothing in this Contract shall be construed as granting to or conferring upon Authorized Purchaser any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

7.7 Competing Services. Subject to the provisions of this Article VII, and Contractor's obligations with respect to Confidential Information, as defined in Article VIII, nothing in this Contract shall preclude or limit in any way the right of Contractor to: (i) provide the 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 shall be 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.

VIII. CONFIDENTIALITY AND NON-DISCLOSURE.

8.1 Confidential Information. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Authorized Purchaser or Authorized Purchaser's clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of Authorized Purchaser ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Authorized Purchaser to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than Authorized Purchaser without the obligation of confidentiality, (e) is disclosed with the written consent of Authorized Purchaser,

or; (f) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

8.2 Non-Disclosure. Subject to required disclosure compelled by applicable law or an administrative or legal process, Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to Authorized Purchaser hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Authorized Purchaser in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Authorized Purchaser 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 Authorized Purchaser in seeking injunctive or other equitable relief in the name of Authorized Purchaser or Contractor against any such person. Contractor agrees that, except as directed by Authorized Purchaser, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Moreover, Contractor agrees that upon termination of this Contract or at Authorized Purchaser's request, Contractor will turn over to Authorized Purchaser all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Contractor may request Authorized Purchaser's permission to retain particular documents, papers, and other matter in Contractor's possession that embody Confidential Information for the purpose of satisfying requirements of a particular, applicable professional standard.

8.2.1 Personal Information. In the performance of the Agreement or Purchase Order 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 in place, 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. Accordingly, Contractor agrees and warrants that it 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 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.

1. 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 Agreement or Purchase Order 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 DAS, the Authorized Purchaser, required by applicable law, or required by an order of a tribunal having competent jurisdiction.
2. Contractor shall report to the Authorized Purchaser, as promptly as possible, 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 Agreement or Purchase Order contract.
3. Contractor shall ensure the compliance of its employees and agents with this section 8.

8.3 Injunctive Relief. Contractor acknowledges that breach of this Article VIII, including disclosure of any Confidential Information, will give rise to irreparable injury to Authorized Purchaser that is inadequately compensable in damages. Accordingly, Authorized Purchaser 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 Authorized Purchaser and are reasonable in scope and content.

IX. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.

9.1 General Representations and Warranties. Contractor represents and warrants to Authorized Purchaser that:

9.1.1 Contractor has the power and authority to enter into and perform this Contract;

9.1.2 This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

9.1.3 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;

9.1.4 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 shall not violate any such law, ordinance, regulation or order.

9.1.5 Contractor's performance under this Agreement creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Agreement.

9.1.6 The Contractor Data and Tax Certification in the form attached hereto as Exhibit B and the Certification Statement For Independent Contractor in the form attached hereto as Exhibit C, if applicable, are true and accurate as of the Effective Date, and Contractor will notify Authorized Purchaser in writing if any such data or certifications change during the term of this Contract such that the attached Exhibits D or E, if applicable, are no longer true and accurate

9.2 Contractor's Performance Warranties. Contractor represents and warrants to Authorized Purchaser that:

9.2.1 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 standards prevalent in Contractor's profession.

9.2.1.1 Contractor's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Authorized Purchaser. Contractor will not perform management functions or make management decisions for Authorized Purchaser.

9.2.2 Through the expiration of the Warranty Period, all Deliverables delivered by Contractor to Authorized Purchaser, shall (a) be free from material errors caused by Contractor's failure to fulfill its obligations under this Contract; and (b) shall materially conform to all requirements and specifications contained in the Contract, including the Statement of Work.

9.2.3 Except as otherwise provided in this Contract, all Deliverables supplied by Contractor to Authorized Purchaser shall be transferred to Authorized Purchaser 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.

9.2.4 When used as authorized by this Contract, no Deliverable delivered by Contractor to Authorized Purchaser infringes, nor will Authorized Purchaser's use, duplication, or transfer of such Deliverables infringe, any copyright, patent, trade secret, or other proprietary right of any third party.

9.2.5 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 Authorized Purchaser and no third party has any right, title or interest in any Deliverables supplied to Authorized Purchaser under this Contract.

9.2.6 Contractor represents and warrants that it has developed, implemented and will maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data as required by ORS 646A.622.

9.3 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..

X. LIMITATION OF LIABILITY.

10.1 EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 11.1, (ii) SECTION 11.2, OR (iii) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE 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 SHALL BE LIMITED TO LIMITED TO AN AMOUNT EQUAL TO THE MAXIMUM NOT-TO-EXCEED COMPENSATION STATED IN SECTION 6.1 PLUS THE AMOUNT OF ANY INCREASE IN THAT MAXIMUM NOT-TO-EXCEED COMPENSATION AUTHORIZED BY AMENDMENT OF THIS CONTRACT INCLUDING CHANGE ORDERS..

10.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST DATA OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

XI. INDEMNITIES.

11.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Authorized Purchaser and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible 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; provided that Contractor shall have no obligation to indemnify Authorized Purchaser 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 Authorized Purchaser or the State of Oregon, and their officers, employees or agents.

11.2 IP Indemnity. In addition to and without limiting the generality of Section 11.1, 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 use thereof infringe 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 infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Agency's prior written consent, which Agency shall 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, that the Deliverable will meet with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing shall 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 shall have no obligation under this section for any claim of infringement based on any unauthorized modification of the materials by AP or any third party or the unauthorized use of the materials.

11.3 Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 11.1 and 11.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 11.1 or Section 11.2; however, neither Contractor nor any attorney engaged by Contractor shall 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 shall 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.

11.4 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

XII. INSURANCE.

12.1 Workers' Compensation Insurance. All employers, including Contractor, that employ subject Workers who provide Services under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

12.2 Professional Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Contract, professional liability insurance including coverage for the following exposures: Technology Errors and Omissions, Security and Privacy Liability, and Media Liability arising from Contractor's rendering of professional services pursuant to this Work Order Contract, with a combined single limit, or the equivalent, of not less than \$1,000,000, for each claim, incident or occurrence This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

12.3 General Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Contract, general liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000, for each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

12.4 Automobile Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Contract, automobile liability insurance with a combined single limit, or the equivalent, of not less than the amount required under the Oregon Financial Responsibility Law (ORS 806.060 through ORS 806.115) for each accident for bodily injury and property damage, including

coverage for the business use of owned, hired or non-owned vehicles, as applicable.

12.5 Additional Insureds. As available, each of the insurance policies that Contractor obtains pursuant to this Article XII shall provide that the State of Oregon, Authorized Purchaser and their divisions, officers and employees are additional insureds under the policy, but only with respect to the Services that Contractor will provide under this Contract.

12.6 Notice of Cancellation or Change. Contractor shall not cancel, reduce its limits for, omit or intend not to renew, or otherwise cause a material change in the insurance coverage required under this Contract without thirty (30) calendar days' prior written notice from Contractor or its insurers to Authorized Purchaser.

12.7 Certificates of Insurance. As evidence of the insurance coverage required under this Contract, Contractor shall furnish insurance certificates, or other acceptable forms of insurance verifications, to Authorized Purchaser before commencing the Services and annually thereafter. The acceptable insurance verifications shall specify all of the parties who are additional insureds, if any, and shall indicate all deductible amounts or retention's for all self insurance. Insuring companies shall be authorized to sell insurance in the State of Oregon. Contractor shall be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance.

XIII. Events of Default.

13.1 Default by Contractor. Contractor shall be in default under this Contract if:

13.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

13.1.2 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 Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice; or

13.1.3 Contractor commits any material breach or default 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 Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice.

13.2 Default by Authorized Purchaser. Authorized Purchaser shall be in default under this Contract if:

13.2.1 Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser 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

13.2.2 Authorized Purchaser 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 Authorized Purchaser 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.

XIV. Remedies for Default.

14.1 Authorized Purchaser's Remedies. In the event Contractor is in default under Section 13.1, Authorized Purchaser 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:

14.1.1 termination of this Contract under Section 15.2;

14.1.2 withholding all monies due for Services that Contractor is obligated but has failed to perform within thirty (30) days after Authorized Purchaser has notified Contractor of the nature of Contractor's default;

14.1.3 Reserved

14.1.4 initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and

14.1.5 exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser 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 Sections 13.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 15.1.

14.2 Contractor's Remedies. In the event Authorized Purchaser terminates this Contract as set forth in Section 15.1, or in the event Authorized Purchaser is in default under Section 13.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 15.3, Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the hours worked but not yet

billed with respect to each Deliverable, up to the not-to-exceed amount for the Deliverable set forth in the Statement of Work; authorized expenses incurred, less previous amounts paid and any claims which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.2, Contractor shall pay any excess to Authorized Purchaser upon written demand.

XV. Termination.

15.1 Authorized Purchaser's Right to Terminate. Authorized Purchaser may, at its sole discretion, terminate this Contract, as follows:

15.1.1 Authorized Purchaser may terminate this Contract for its convenience upon thirty (30) days' prior written notice to Contractor.

15.1.2 Authorized Purchaser may terminate this Contract if Authorized Purchaser fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's services;

15.1.3 Authorized Purchaser 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 Authorized Purchaser is prohibited from paying for such Services from the planned funding source;

15.2 Authorized Purchaser's Right to Terminate for Cause. In addition to any other rights and remedies Authorized Purchaser may have under this Contract, Authorized Purchaser may terminate this Contract, in whole or in part, immediately upon Contractor's default under Section 13.1.

15.3 Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon Authorized Purchaser's default under Section 13.2

15.4 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Authorized Purchaser all of Authorized Purchaser's property (including without limitation Authorized Purchaser's Confidential Information or any Deliverables for which Authorized Purchaser has made payment in whole or in part) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such Authorized Purchaser property is expressed or embodied at that time. Any property or Deliverable returned or delivered to Authorized Purchaser pursuant to this Section shall be provided without the warranties set forth in Section 9.2.2, and subject to any additional disclaimers from Contractor that Authorized Purchaser is willing to accept at the time, **unless**, with respect to Deliverables, Authorized Purchaser has accepted the Deliverable pursuant to Section 2.3.

XVI. INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING.

16.1 Perform All Services. Contractor shall perform all Services as an independent contractor. Although Authorized Purchaser reserves the right to evaluate the quality of the completed performance, Authorized Purchaser 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.

16.2 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 Authorized Purchaser, as those terms are used in ORS 30.265.

16.3 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, Authorized Purchaser 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 selfemployed individual.

XVII. COMPLIANCE WITH APPLICABLE LAW.

17.1 Compliance with Law Generally. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to 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; (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. Authorized Purchaser'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.

17.2 Compliance with Federal Law. Without limiting the generality of the foregoing, Contractor shall comply with the Federal Laws set forth in Exhibit J to the Work Order Contract, if applicable, which is attached hereto and incorporated herein by this reference.

XVIII. DISPUTE RESOLUTION.

18.1 Alternative Dispute Resolution. Any dispute or claim arising out of or relating to the WOC or the services provided thereunder shall be submitted first to non-binding mediation (unless either party elects to forego mediation by initiating a written request for litigation) and if mediation is not successful within 90 days after the issuance by one of the parties of a request for mediation then to litigation. Mediation, if selected, may take place at a location to be designated by the parties.

18.1.2 Either party may seek to enforce any written agreement reached by the parties during mediation in accord with section 18.2 or section 18.3, as appropriate.

18.2 Litigation (State Agencies). Subject to the alternative dispute resolution process in 18.1, any claim, action, suit, or proceeding (collectively, "Claim") between Authorized Purchaser (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall 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 shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall 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. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 18.1.

18.3 Litigation (ORCPP). Subject to the alternative dispute resolution process in 18.1, any Claims between Contractor and an ORCPP Participant that is not a state agency that arise from or relate to the Price Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Participant has its principal office, or at such ORCPP Participant's option, within such other county as such ORCPP Participant shall be entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise

prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP Participant resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP Participant's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

18.4 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

XIX. MISCELLANEOUS PROVISIONS.

19.1 Order of Precedence. This Contract consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Contract, less its Exhibits; (b) the Statement of Work, Exhibit A; (c) the Exhibits. The aforementioned Exhibits are by this reference incorporated in the Contract.

19.2 Recycling. Contractor shall, to the maximum extent economically feasible in the performance of the Contract, 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)).

19.3 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 Authorized Purchaser's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of Authorized Purchaser. Authorized Purchaser's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

19.5 No Third-Party Beneficiaries. Authorized Purchaser 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 shall 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.

19.6 Funds Available and Authorized. Contractor shall not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon. Authorized Purchaser believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within Authorized Purchaser's biennial appropriation or limitation. Contractor understands and agrees that Authorized Purchaser's payment of amounts under this Contract is contingent on Authorized Purchaser receiving appropriations, limitations, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

19.7 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 Authorized Purchaser, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of three (3) 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.

19.8 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.

19.9 Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations and declarations set forth in Articles VI, VII, VIII, IX, X, XI, XIV, XV, XVI and XVIII, and Sections 19.1, 19.4, 19.5, 19.7, 19.9, 19.12, 19.13, 19.18, 19.19, 19.20 and 19.21.

19.10 Time Is of the Essence. Contractor agrees that time is of the essence under this Contract.

19.11 Force Majeure. Neither Authorized Purchaser nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been 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. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and

shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19.12 Notices. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor at the address or number set forth on Exhibit D, and to Authorized Purchaser at the address or number set forth on Exhibit E, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 19.12. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against Authorized Purchaser, such facsimile transmission must be confirmed by telephone notice to the Authorized Purchaser Authorized Representative. Any communication or notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative.

19.13 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

19.14 Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall 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 shall constitute an original.

19.15 Amendments. This Contract may be amended, modified, or supplemented only by a written amendment signed by Authorized Purchaser and Contractor that has been approved by DAS and DOJ, if required by applicable law. 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 shall be effective until all requisite signatures and approvals are obtained.

19.15.1 Anticipated Amendments. The parties have determined that during the term of the Contract, the parties may need to modify selected terms, conditions, price(s) and types of Services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

19.15.1.1 Amendments required as a result of necessary changes in applicable federal and State law or the State's or Authorized Purchaser's business processes that may restructure the State, an

Authorized Purchaser or the Authorized Purchaser's requirements related to the Services acquired;

19.15.1.2 Amendments to the Scope of Work to add or otherwise change or clarify Services within the scope of the Price and Services Agreement, the RFP, and the Contract;

19.15.1.3 Amendments to extend the term of the Contract; and

19.15.1.4 Amendments to increase the Maximum-Not-to-Exceed Amount for the Contract, or to set or increase an established Maximum-Not-to-Exceed Amount for a Work Order Contract, according to the rates established in Attachment C to the Price and Services Agreement, the Rate Card, based on changes to Services.

19.16 Disclosure of Social Security Number. Contractor must 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.

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

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

19.19 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.

19.20 No Partnership. This Contract is not intended, and shall not be construed, to create a partnership or joint venture between Authorized Purchaser and Contractor. Nothing in this Contract shall be construed to make Authorized Purchaser and Contractor partners or joint venture participants.

19.21 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 Authorized Purchaser or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Authorized Purchaser or the State of Oregon of Contractor's services, without the prior written consent of Authorized Purchaser.

OPTIONAL PROVISION 19.22, WHICH THE PARTIES MAY INSERT INTO A PLANNED WOC AS APPLICABLE.

[19.22. BENCHMARK/MEASUREMENT SERVICES. With respect to any benchmark or measurement Services to be performed by Contractor, Authorized Purchaser acknowledges that the contents of the Measurement Report (as defined in the Authorized Purchaser Work Order) and other deliverables are based upon information which is proprietary to Contractor and contained in Contractor's proprietary database.

This provision can assist DAS and Authorized Purchasers to acknowledge that the contractor may own and maintain a comprehensive database whose use name(s) are kept confidential and anonymous. If it exists, such a database could be used for Authorized Purchaser Work Orders requiring comprehensive benchmarking analysis; performance measurement against peer group comparisons; and cost, benefit and return on investment reporting using comprehensive data bases. Such Work Orders may also include the related analysis, feasibility, alternatives, and/or recommendations to support project and system development progress. If parties desire to include this activity in a particular engagement, the Authorized Purchaser and affected Contractor may negotiate supplemental language for the provision to appropriately address confidentiality and intellectual property issues.]

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 AGENCY APPROVALS.

[Authorized Purchaser: Individual Work Order Contracts that exceed \$100,000 may require the Attorney General's legal sufficiency approval.]

CONTRACTOR

By: _____

Title: _____

Date: _____

Telephone number: _____ Facsimile number: _____

AUTHORIZED PURCHASER

Authorized Signature: _____

Title: _____

Date: _____

Telephone Number: _____ Facsimile Number: _____

DEPARTMENT OF JUSTICE LEGAL SUFFICIENCY REVIEW AND APPROVAL

(Authorized Purchasers should contact their contract office and legal counsel to determine applicability)

Authorized Signature: _____

Title: _____

Date: _____

Telephone Number: _____ Facsimile Number: _____

**DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE PROCUREMENT OFFICE**

(Authorized Purchasers should contact their contract office and legal counsel to determine applicability)

Authorized Signature: _____

Title: _____

Date: _____

Telephone Number: _____ **Facsimile Number:** _____

EXHIBIT A
to Work Order Contract

STATEMENT OF WORK

(To be negotiated with the Authorized Purchaser to the extent it does not conflict with the Terms and Conditions of the Price and Services Agreement, the ESOW and the Work Order Contract)

**EXHIBIT B
to Work Order Contract**

CONTRACTOR DATA AND TAX CERTIFICATION

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (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 data is true and accurate.

Federal Tax Number _____

Oregon Tax Number _____

Contractor Signature _____ **Date** _____

EXHIBIT C
to Work Order Contract

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR
(Contractor completes if Contractor is not a corporation or is a professional corporation.)

A. CONTRACTOR IS 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 is used for the business that 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_____

(Authorized Purchaser completes B below when Contractor completes Section A above.)

B. AGENCY APPROVAL.

ORS 670.600. Independent Contractor Standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if the standards of this section are met. Authorized Purchaser certifies the contracted work meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Authorized Purchaser Signature _____

Date _____

(Authorized Purchaser’s certification is solely for the Authorized Purchaser’s benefit and internal use

**EXHIBIT D
to Work Order Contract**

CONTRACTOR'S PERSONNEL

Authorized Representative:

Project Manager:

Other Key Persons:

EXHIBIT E
to Work Order Contract

AGENCY PERSONNEL

Authorized Representative:

Project Manager:

EXHIBIT F
to Work Order Contract

RESERVED

**EXHIBIT G
to Work Order Contract**

PROVISIONS REQUIRED BY FEDERAL LAW

[Authorized Purchaser must mark appropriate box below. Authorized Purchaser should determine whether federal funds are being used in this procurement and contact its contract office and legal counsel to ascertain if this exhibit is applicable to the Work Order Contract.]

- The terms and conditions of this Exhibit G are applicable to the Work Order Contract.
- The terms and conditions of this Exhibit G are NOT applicable to the Work Order Contract.

Without limiting the generality of section 17.1 of the Work Order Contract, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. For purposes of this Contract, all references to federal laws are references to federal laws as they may be amended from time to time.

(1) Equal Employment Opportunity. If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(2) Clean Air, Clean Water, EPA Regulations. If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Agency, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

(3) Energy Efficiency. Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163).

(4) Truth in Lobbying. The Contractor certifies, to the best of the Contractor's knowledge and belief that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(5) HIPAA Compliance. If the work performed under this Contract are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, work performed under this Contract is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

A. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and Agency for purposes directly related to the provision of services to clients which are funded in

whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Agency Privacy Rules, OAR 410-014-0000 *et. seq.*, or the Agency Notice of Privacy Practices, if done by Agency. A copy of the most recent Agency Notice of Privacy Practices is posted on the Agency web site at:

<http://www.dhs.state.or.us/admin/hipaa/project/privforms.htm>,

or may be obtained from Agency

B. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with Agency in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with Agency and shall comply with the Agency EDI Rules.

C. Consultation and Testing. If Contractor reasonably believes that the Contractor's or the Agency's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the Agency's HIPAA officer. Contractor or Agency may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the Agency's testing schedule.

D. If Contractor is deemed to be a business associate of Agency under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164, Contractor hereby provides Agency with satisfactory assurances that if it receives from Agency or any trading partner any protected health information of any individual, it shall maintain the security and confidentiality of such information as required by the HIPAA's Privacy Rule, and other applicable laws and regulations. Without limiting the foregoing, Contractor agrees that:

- (a) Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Contract or as required by law;
 - 1. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Contract;
 - 2. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Contract;
- (c) Contractor will report to Agency any use or disclosure of PHI not provided for by this Contract of which Contractor becomes aware;

- (d) Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;
- (e) Contractor shall make available to Agency such information as they may require to fulfill their obligations to account for disclosures of such information;
- (f) Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Agency or trading partner (or created or received by Contractor on behalf of Agency or trading partner) available to Agency and to the Secretary of the United States Department of Health and Human Services, for purposes of determining Agency's or trading partners' compliance with HIPAA; and
- (g) if feasible, upon termination of this Contract, Contractor shall return or destroy all PHI received from Agency or trading partners (or created or received by Contractor on behalf of Agency or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Contract to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

Subject to the foregoing restrictions, Agency agrees that Contractor may use such PHI in the process of providing transaction mapping, trading partner profiling and training and mentoring services for Agency and trading partners under this Contract.

(6) Resource Conservation and Recovery. Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

(7) Substance Abuse Prevention and Treatment. Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64).

(8) Audits. Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth

in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

(9) Debarment and Suspension. Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

(10) Medicaid Compliance. To the extent Contractor performs any work whose costs are paid in whole or in part by Medicaid, Contractor shall comply with and cause its subcontractors to comply with the federal and state Medicaid statutes and regulations applicable to the work, including but not limited to:

A. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to Agency, the Medicaid Fraud Control Unit of the Oregon Agency of Justice and the Secretary of Health and Human Services;

B. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;

C. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and

D. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

(11) ADA. Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work.

(12) Pro-Children Act. Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

**EXHIBIT H
to Work Order Contract**

**LAWS AND REGULATIONS
SPECIFIC TO THE AUTHORIZED PURCHASER
AND APPLICABLE TO THIS WORK ORDER CONTRACT**

[Authorized Purchaser must mark appropriate box below. Authorized Purchaser should determine whether Authorized Purchaser is subject to additional laws and regulations to which Authorized Purchaser must ensure Contractor complies. Authorized Purchaser should contact its contract office and legal counsel to ascertain if this exhibit is applicable to the Work Order Contract.]

- The terms and conditions of this Exhibit H are applicable to the Work Order Contract.
- The terms and conditions of this Exhibit H are NOT applicable to the Work Order Contract.

[If this exhibit is applicable to the Work Order Contract, then Authorized Purchaser should cite the appropriate statutes and rules in the space below.]