STATE OF OREGON

INFORMATION TECHNOLOGY SERVICES CONTRACT

(System Acquisition)

This Information Technology Consulting Services Contract (Contract) is entered into by and between the State of Oregon (State) acting by and through its [Department of Administrative Services, Procurement Services (DAS PS) on behalf of the] [name of agency] (Agency), and\_\_\_\_\_, an \_\_\_\_\_\_\_\_\_\_ corporation (Contractor) and is effective as of the Effective Date (defined below).

# RECITALS

1. Agency desires to engage a Contractor to provide [what] (the “Solution” as defined below) to enable Agency to achieve specific business and Agency mission objectives defined in this Contract, including professional services and knowledge transfer for the project known as [what]. To that end, DAS PS issued [what].
2. Contractor is the successful proposer to the RFP, and Agency desires Contractor to perform the Services.
3. Contractor desires to perform the Services for Agency.

# AGREEMENT

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

1. **DEFINITIONS**.

**“Acceptance”** or **“Accepted”** means written confirmation by Agency that Contractor has completed a Deliverable according to the Acceptance Criteria and the Deliverable is accepted for purposes of interim payment. These terms are distinct from “Final Acceptance.”

**“Acceptance Criteria”** means the criteria for accepting Deliverables under this Contract, including but not limited to Requirements, specifications for Deliverables in a Statement of Work, and the Performance Warranties set forth in Section 11.2.

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

**“Agency Data”** means information created and information stored by Agency [or Contractor on behalf of Agency] through the Services. Agency Data is Confidential Information.

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

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

**“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 E. Agency’s Authorized Representative is the person so identified in Exhibit F.

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

**“Calendar Days”** means contiguous days.

**“Change Order”** means a form of Contract amendment pursuant to Section 7 that makes changes to a Statement of Work, Exhibit B, or Exhibit K within the scope of this Contract.

**“Confidential Information”** is defined in Section 9.1.

**“Contract”** means all terms and conditions in this document and all its attachments and exhibits, including as amended.

**“Contractor Intellectual Property”** means any intellectual property that is owned by Contractor, which includes any proprietary software or systems described in Exhibit G, Documentation, and derivative works and compilations of any Contractor Intellectual Property.

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

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

**“Defect”** means a reproducible failure of the Solution to operate in accordance with the Requirements in Exhibit L, specifications under a Statement of Work, or as required under a Service Level Agreement, despite the proper use of the Solution. A Defect may be due to a Data Error, or a problem with the Solution, Documentation, or both. Prior to Final Acceptance, a Defect may be due to a missed, missing, or misinterpreted Requirement.

Defect Levels will be negotiated with the successful Proposer, but are anticipated to fall into one of the following categories:

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

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

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

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

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

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

**“Documentation”** means all documents, including documents that are Deliverables described in a Statement of Work, and which may include reports, minutes, manuals, training materials, operator’s and user manuals, guides, commentary, listings, requirements documentation, and other materials that are to be delivered by Contractor under this Contract and for use in conjunction with and for the operation of the Solution. Documentation includes documents in hard copy or electronic form.

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

**“Effective Date”** means the date specified in Section 2 or the date on which this Contract is fully executed and approved according to applicable laws, rules and regulations, whichever is later.

**“EIS”** means the State Chief Information Officer acting as DAS’ Enterprise Information Services.

**“Final Acceptance”** criteria are in Section 3.4.

**“Go-Live”** means the Milestone date identified in a Statement of Work, Change Order, or applicable Accepted Deliverable, on which the Solution will be available for Agency and its users in a Production Environment for the processing of transactions in accordance with Requirements and the Service Level Agreements. A Go-Live date may be associated with a specific phase or Enhancement under a Statement of Work, a Change Order, or an Enhancement Order.

**“Help Desk Support”** means all necessary activities to assist the users to use the Solution effectively and efficiently. Agency will provide Tier 1 Help Desk Support as defined below. Proposer shall provide Tier 2 and 3 Help Desk Support as defined below.

Tier 1 Support – Agency Help Desk response to incidents, with resolution of incidents that can be resolved by the Agency Help Desk (e.g. password resets, permissions settings, user provisioning)

and Tier 2 assignment of those incidents that need further analysis.

Tier 2 Support – Analysis of escalated incidents to Contractor resources that have some technical or functional knowledge of the system. Examples of incidents that may be resolved by Tier 2 analysis, include data fixes or process issues.

Tier 3 Support – incidents leading to Solution changes that need to be incorporated into a Release. The established Agency Change Management process must be followed.

**“Intellectual Property Rights”** is defined in Section 12.2.

**“JAD”** means Joint Application Design and is a workshop or series or workshops where subject matter experts and IT professionals meet to define and review the business requirements for a system.

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

**“Knowledge Transfer”** means activities designed to impart detailed information from Contractor to Agency about the Solution. Knowledge Transfer goes beyond formalized training and Documentation to include Contractor ensuring that Agency can support the enhancements, operations and maintenance of the Solution. Knowledge Transfer includes Agency staff and other resources being integrated into Contractor’s work activities and being an integral part of identifying and resolving issues. Knowledge Transfer activities include ‘online work sessions’ training, which is informal training with the specific intent of developing skills or knowledge working side by side with Contractor.

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

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

**“Personal Information”** is defined in Exhibit J.

**“Production Environment”** means the logical group of virtual or physical resources that is a permanent environment established for the daily business use and maintenance of the Solution in a live environment.

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

**“Requirements”** are the functions and elements required for the Solution. Requirements are in Exhibit L, and will be managed via Deliverables identified in an applicable Statement of Work.

**“RFP”** means the Request for Proposal #[number].

**“Rollout”** means the Milestone date identified in a Statement of Work, Change Order, or applicable Accepted Deliverable, on which the Solution will be available for Agency and its users in a Production Environment for the processing of transactions in accordance with Requirements and the Service Level Agreement. A Rollout date may be associated with a specific phase or enhancement under a Statement of Work, or a Change Order.

**“Schedule of Deliverables”** means the attributes of a Statement of Work that describe each Task, Deliverable, measurable attributes of each Deliverable and Milestone with identification of the Services that are associated with them, and a completion date for each Milestone and Deliverable. As an example, the Schedule of Deliverables includes the current, Accepted Project Management Plan and Schedule.

**“Service Level Agreement”** or **“SLA”** means an agreement that defines specific elements of the Services or performance guarantees for the Solution, periods of time during which performance will be measured, measurable conditions for determining successful completion or performance, and consequences for not meeting the SLA. The SLA may contain conditions for starting, stopping, and pausing the measurement of the relevant time period. SLAs are in Exhibit B.

**“Services”** means all effort to be expended by Contractor under the Contract, including advice and expertise, and development and delivery of Deliverables.

**“Software”** is an all-inclusive term meaning any computer programs, routines, or subroutines supplied by Contractor, including operating software, programming aids, application programs, and software programs.

**“State”** means the State of Oregon.

**“Statement of Work”** or **“SOW”** means a document that describes the Services to be provided by Contractor, including the Tasks, Deliverables and Milestones, Documentation, Work Product, the attributes of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the Payment Schedule for each Deliverable and Milestone, and any other items as agreed by the parties and attached as a Statement of Work, including as amended pursuant to Section 7. As used in this Contract, except where otherwise expressly identified as being applicable only to a specific Statement of Work, a reference to “Exhibit A,” “SOW” or “Statement of Work” means the applicable Exhibit A (e.g., Exhibit A-1, Exhibit A-2, etc.) individually.[A Statement of Work includes Accepted Deliverables, if specifically agreed upon in a Statement of Work.]

**“Solution”** means the sum of the Services, including Work Product, Deliverables, intellectual property, and Documentation described in a Statement of Work that comprises the system, functionality, and operations that Contractor will deliver under this Contract.

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

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

**“Warranty Period”** means one of the time periods specified in Section 3.7.

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

1. **TERM**.

The Effective Date of this Contract is [\_\_\_\_\_\_\_\_\_], or the date on which this Contract is fully executed and approved according to applicable laws, rules and regulations, whichever is later. This Contract terminates on [date to be determined at Contract execution, anticipated to be \_1\_\_ year from Final Acceptance], unless otherwise terminated or extended in accordance with its terms. [Notwithstanding the foregoing, the term for any license or maintenance and support agreement under this Contract is as specified in those agreements, unless any such term is terminated in accordance with this Contract.]

1. **SCOPE OF SERVICES**.
   1. **Performance and Delivery**.
      1. **Responsibilities of Contractor**. Contractor shall perform the Services as set forth in each Statement of Work, in accordance with the applicable current, Accepted Project Implementation Plan and Schedule and the standards and methodologies set forth in the Statement of Work and elsewhere in this Contract, including the Service Level Agreements and Performance Standards. Contractor shall perform the Services:
         1. Employing a methodology that conforms to the standards established by the Project Management Institute (PMI) as described in the current Project Management Body of Knowledge (PMBOK), supplemented by standards set forth in ISO 12207; and
         2. In compliance with information technology standards established by Enterprise Information Services (EIS), found at: https://www.oregon.gov/das/Pages/policies.aspx, which may be updated from time to time.
      2. Contractor shall cooperate with Agency and its designated third party contractors by providing access and information on Contractor’s Services (such as architecture, design, operating environment, security, interfaces, and operating parameters) as required for all oversight activities and Agency-identified third party services.
      3. If Agency elects to have Contractor provide hardware, Contractor shall deliver any hardware to Agency, F.O.B. destination, to the destination specified by Agency, and according to the delivery schedule approved by Agency. Title for the hardware will pass to State for each piece of hardware on the date of Final Acceptance. During the period that hardware is in transit, and until the hardware is tendered to enable Agency to take delivery of the hardware, Contractor and its insurers, if any, relieve Agency and State of the responsibility for all risk of loss of, or damage to, the hardware. Thereafter, all risk of loss of, or damage to, the hardware will be borne by Agency.
   2. **Responsibilities of Agency**. If a Statement of Work requires Agency to provide any resources, and Agency fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner for a period that does not exceed thirty (30) Calendar Days, Contractor’s sole remedy is an extension of the applicable delivery dates corresponding to the delay caused by Agency. If Agency’s failure to provide such resources exceeds thirty (30) Calendar Days, and Contractor can show to the reasonable satisfaction of Agency that Agency’s failure has resulted in an unavoidable increase in the cost of the Services required for the Statement of Work, then Contractor will be entitled to recover from Agency the reasonable amount of such increased costs. Contractor’s right to delay applicable delivery dates or recover for increased costs may be exercised only if Contractor provides Agency with reasonable notice of Agency’s failure and Contractor uses commercially reasonable efforts to perform notwithstanding Agency’s failure to perform.
   3. **Delivery and Review of Deliverables**.
      1. Contractor shall deliver Deliverables and complete Milestones as set forth in a Statement of Work by no later than the date or dates set for delivery in the Statement of Work. Delivery dates, both critical and non-critical, are set forth in the applicable Statement of Work and are subject to Agency performing its responsibilities in a timely manner.
      2. Contractor shall provide written notice to Agency upon delivery of a completed Deliverable to Agency. By no later than (i) fifteen (15) Business Days after receipt of such notice, or (ii) the date set forth for Agency’s review in the current Accepted Project Implementation Plan and Schedule, Agency will determine whether the Deliverable meets Acceptance Criteria set forth in the Contract. Acceptance Criteria includes all requirements for a Deliverable and associated Services described in the applicable Statement of Work, and the Performance Warranties in Section 11.2. With respect to any Deliverables that are susceptible to Acceptance Testing, Agency will conduct Acceptance Testing as set forth in Section 3.4. If Agency determines that the Deliverable meets, in all material respects, Acceptance Criteria, Agency will notify Contractor of Agency’s Acceptance in writing.
      3. If Agency determines that a Deliverable does not meet the Acceptance Criteria in all material respects, Agency will notify Contractor in writing of Agency’s rejection of the Deliverable, and describe in reasonable detail in such notice Agency’s basis for rejection of the Deliverable. Upon receipt of notice of non-acceptance, Contractor shall, within a fifteen (15) Business Day period, modify or improve the Deliverable at Contractor’s sole expense so that the Deliverable meets, in all material respects, the Acceptance Criteria, and notify Agency in writing that it has completed such modifications or improvements and re-tender the Deliverable to Agency. Agency will thereafter review the modified or improved Deliverable within fifteen (15) Business Days of receipt of the Contractor’s delivery of the Deliverable. Failure of the Deliverable to meet the Acceptance Criteria in all material respects after the second submission will constitute a default by Contractor. In the event of such default, Agency may either (i) notify Contractor of such default or instruct Contractor to modify or improve the Deliverables as set forth in this section, or (ii) notify Contractor of such default and pursue its remedies for default under Section 15 of this Contract.
   4. **Acceptance Testing**.

Acceptance Testing provisions will be negotiated with the successful Proposer and will reflect the agreed-upon schedule and methodology, but are anticipated to address the following:

* + 1. **Solution Testing**. Contractor shall install and test the Solution in the Test Environment in accordance with Exhibit A, by using it in off-line processing of test data in order to determine if the Solution is in material conformance with Requirements set forth in Exhibit L, and in Deliverable \_\_3.3\_, Functional Design Document, and Deliverable \_\_3.4, Technical Design Document, as those Deliverables are Accepted at the time of testing under this section. If Level 1, Level 2, or Level 3 Defects are discovered in the Solution, Contractor shall correct such Defects and retest at no additional charge to Agency prior to completion of System Testing under this section. Contractor shall resolve Level 4 Defects at no additional charge to Agency within Agency-approved timeframes.
    2. **User Acceptance Testing (UAT).** Following Agency’s Acceptance of the final Deliverable 5.3, Test Completion Report, an updated Requirements Traceability Matrix with test case tracking, and the correction of all known Level 1, Level 2, and Level 3 Defects discovered prior to UAT, Agency will test the remaining Deliverables for the Solution by using it in off-line processing using both test data and Agency’s converted operational data in order to determine if the Solution is in material conformance with Requirements set forth in Exhibit L, and in Deliverable 3.3, Functional Design Document, and Deliverable 3.4, Technical Design Document, as those Deliverables are Accepted at the time of testing under this section. Contractor shall deliver UAT Services in accordance with the UAT Task in Exhibit A. Agency will notify Contractor in writing of each Defect discovered during UAT in accordance with the Accepted User Acceptance Test Plan, and specify its level. Contractor shall correct all Level 1, Level 2, and Level 3 Defects identified during UAT at no additional charge to Agency, and resubmit the corrected Solution to Agency for retesting within ten (10) Business Days of a written notice of Defect. All such retesting will be done on an iterative basis and be completed by Agency no later than ten (10) Business Days after Contractor submission of the corrected Solution. Contractor shall correct all Level 1 Defects, Level 2 Defects, and Level 3 Defects prior to completion of UAT activities under this section. Contractor shall resolve Level 4 Defects discovered during UAT at no additional charge to Agency within Agency-approved timeframes.
  1. **Stabilization Period**. Upon completion of Rollout, Agency will use the Solution for processing of Data in a live Production Environment for a period of 90 (ninety) Calendar Days (Stabilization Period) to determine if the Solution is stable, complete, and operating correctly.
     1. If Defect(s) are discovered during the Stabilization Period, Agency will notify Contractor of the Defect in writing as soon as practical, describing the Defect and specifying its level. Upon receipt of such written notice, Contractor shall correct any Level 1 Defect within four (4) consecutive hours, any Level 2 Defect within twenty four (24) consecutive hours, and any Level 3 Defect within three (3) Business Days from the time of the written notice, and submit the corrected Solution to Agency for validation in accordance with this Section, at no additional charge to Agency. All such validation will be completed by Agency no later than five (5) Business Days after Contractor submission of the corrected Solution or as otherwise agreed upon by the parties.
     2. At the end of the Stabilization Period, if any Level 1, Level 2, or Level 3 Defects discovered during the Acceptance Period remain uncorrected, Agency will grant Contractor one additional five (5) Business Day period from the end of the Stabilization Period to correct such Defects. If the Defects are not corrected during that period, unless Agency in its discretion allows additional time for correction, Agency may declare a material breach of this Contract by Contractor.
     3. The parties will set priorities for Level 4 Defects remaining at the end of the Stabilization Period, and Contractor shall correct such Defects during one or more a maintenance release(s) to be delivered on an agreed upon schedule.
     4. Completion of this Stabilization Period will mark the end of implementation under Statement of Work A-1.
  2. **Final Acceptance**. Final Acceptance will occur when the following events have occurred or conditions exist:
     1. Agency has notified Contractor that the Solution meets all Acceptance Criteria and all Acceptance Tests required pursuant to Section 3.4 have been successfully completed including as specified in the applicable Statement of Work;
     2. The Solution is stable, complete, and operating correctly as specified in the applicable Statement of Work, without Level 1, Level 2, or Level 3 Defects;
     3. All Documentation is complete, inventoried, and Accepted by Agency. Contractor shall provide all text Documentation in an electronic format as specified in the applicable Statement of Work;
     4. All Software, configuration data, and system configuration information is complete, and are stored and controlled under a configuration management system as specified in the applicable Statement of Work;
     5. Contractor has delivered all source code and Documentation in accordance with the terms of this Contract, including the applicable Statement of Work;
     6. Contractor has reconciled all Requirements against the delivered, tested Solution to ensure Contractor has clearly and transparently met each Requirement.
     7. Agency has notified Contractor that State of Oregon authorizations to Accept the Solution have been received; and
     8. Contractor has completed and Agency has Accepted Deliverables for User Training and Technical Training as specified in the applicable Statement of Work.
  3. **Warranty Period**.
     1. **Post-Implementation Warranty Period.** Contractor shall warrant the initial implementation of the Solution Accepted under Statement of Work A-1 for a period of three hundred and sixty-five (365) Calendar Days following Final Acceptance. During the Post-Implementation Warranty Period, Contractor shall, at no additional charge to Agency, furnish such materials and Services necessary to correct any Defects in the Solution that prevent the Solution from meeting the Acceptance Criteria and Contract warranties. Contractor shall cure Defects discovered during the Post-Implementation Warranty Period that prevent the Solution from meeting the Acceptance Criteria and Contract warranties.
     2. **Solution Change Warranty Period.** Contractor shall warrant Solution changes that modify or enhance the Solution Accepted at Final Acceptance, and that are not Defect corrections, for a period of ninety (90) Calendar Days following Acceptance of the implemented change. Contractor shall, at no additional charge to Agency, furnish such materials and Services necessary to correct any Defects relating to the Solution change that prevent the Solution from meeting the Acceptance Criteria and Contract warranties. Contractor shall cure Defects discovered during the Solution Change Warranty Period that prevent the Solution from meeting the Acceptance Criteria and Contract warranties.

* 1. **Performance Standards and Service Level Agreements**. 
     1. Contractor agrees to meet the performance standards and Service Level Agreements established in Exhibit A, Statement of Work, and in Exhibit B, Service Level Agreements and Performance Standards, during the Contract term.
     2. **Failure to Perform.**
        1. If Contractor fails to meet a performance standard, such as a Service Level Agreement, Contractor shall: (i) investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a root cause analysis of the failure; (ii) advise Agency, as and to the extent requested by Agency, of the status of remedial efforts being undertaken with respect to such failure; (iii) minimize the impact of and correct the problem and begin meeting the performance standard; and (iv) take appropriate preventive measures so that the failure does not recur.
        2. As provided in Section 15.1, Contractor agrees to pay the service credits or liquidated damages specified in Exhibit B if Contractor fails to provide Deliverables and Services as and when required by a Statement of Work or the Service Level Agreements specified in Exhibit B. This section does not limit Agency’s rights with respect to the events upon which Agency may rely as a basis for Agency’s termination of this Contract for cause.
     3. **Measurement and Monitoring Tools**. Contractor shall measure and monitor Solution performance, and shall utilize the necessary measurement and monitoring tools and procedures required to measure and report Contractor’s performance of the Services against the Service Level Agreements. Such measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Service Level Agreements, and is subject to audit by Agency. Contractor shall provide Agency with information and access to such tools and procedures, for purposes of auditing and verification.
  2. **Transition Services**. Contractor shall provide transition services to support a responsible and secure transition of Services and Agency Data to another service provider or to Agency (Transition Services).
     1. Upon receipt of a notice prior to expiration that Agency will engage Contractor’s Transition Services, or receipt of notice of termination and notwithstanding the reason for termination (whether for cause or without cause and whether by Contractor or Agency, and whether for all or some Services), Contractor shall continue to provide Services and shall provide Transition Services as described in the Transition Plan (defined below) for the period set in the notice and in the subsequent Transition Plan (the “Transition Period”), on the following conditions:
        1. Agency is up to date with its undisputed payment obligations at the commencement of the Transition Period, and
        2. Agency pays all undisputed invoices during the Transition Period in accordance with its obligations referenced in Section 6.
     2. If during the Transition Period Contractor believes Agency is not in compliance with the foregoing conditions, Contractor shall give Agency written notice of such noncompliance and Agency will have fifteen (15) Business Days, or such longer period to which the parties may agree, to correct the noncompliance before Contractor may end the Transition Period and move to the Wind-Down Phase described below.
     3. Following receipt of the notice of termination (whether or not Contractor or Agency initiated the termination), Contractor shall not, without Agency’s prior written consent, which will not be unreasonably withheld, transfer, reassign, or otherwise redeploy any of Contractor’s personnel from providing Services under this Contract.
     4. **Transition** **Plan**. Contractor and Agency will outline a Transition Plan, which may be requested pursuant to a notice of termination or in anticipation of the Contract terminating in accordance with its terms. The Transition Plan may serve as an update to or a confirmation of a Transition Services Task in the Statement of Work. Contractor shall deliver a detailed Transition Plan within fourteen (14) Calendar Days of Agency’s written request, or otherwise within a timeframe agreed upon by the parties, for Agency review. The Transition Plan will not be effective until it is approved by DOJ. This plan will determine the nature and extent of Contractor’s Transition Services obligations and detail the transfer of Services, but must not reduce Contractor’s obligation under this Contract to provide all Services necessary for Transition. The Transition Period will commence on the start date set in the DOJ-approved Transition Plan; provided, however, if Contractor does not deliver an acceptable Transition Plan on or before the Contract termination date, then the parties will abide by a draft of the plan promulgated by Agency until the Transition Plan is approved by DOJ. The Transition Plan must address at least: 
        1. The respective Tasks and Deliverables to be completed by each party under the Transition Plan,
        2. A schedule pursuant to which such Tasks and Deliverables will be completed, and
        3. A schedule identifying which party is responsible for paying the cost (if any) related to each Task and Deliverable. This schedule may include Transition Services that will not exceed the current Contract Maximum Not-To-Exceed Compensation. If the parties agree Transition Services require new or additional Services that cause an increase in the Contract Maximum Not-To-Exceed Compensation, the Transition Plan will be in the form of a Contract amendment.
     5. The parties will cooperate in good faith with each other in connection with their obligations under this Section 3.7 and will perform their obligations under the DOJ-approved Transition Plan. If the Transition Period extends beyond the Contract term, the provisions of this Contract will remain in effect for the duration of the Transition Period.
     6. Contractor shall complete the transition of Services from Contractor and its subcontractors to Agency and to any providers that Agency designates, without causing any unnecessary interruption of or adverse impact on the Services.
     7. Without limiting the generality of the aforementioned obligations, Contractor shall:
        1. Cooperate with Agency and any Agency-designated provider by promptly taking all steps required to assist Agency in completing the Transition Plan.
        2. Provide Agency and any Agency-designated provider with all information regarding the Services and Deliverables that these parties will need to complete the Transition Period. This includes data conversions, data access or transfers, and interface specifications.
        3. Promptly and orderly conclude all Services as Agency may direct. This includes the documentation of work in progress, return of property under Section 16.6, and other measures to provide an orderly transition to Agency and any Agency-designated provider.
     8. **Wind-Down**. Upon the later of (i) the termination of this Contract or (ii) termination of the Transition Period, Contractor will cease to perform Services, and Agency will pay Contractor all amounts payable to Contractor for Deliverables and Services delivered, and pre-approved expenses incurred through the end of the Contract or Transition Period; provided, however, when such termination is due to the breach or bankruptcy of Contractor, Agency will not be required to pay any amounts claimed by Contractor to be due until Agency determines what, if any, setoffs are required and the remedies owed to Agency are either agreed upon by Contractor through a settlement or ordered by a court of competent authority.

1. **CONTRACTOR’S PERSONNEL**.
   1. **Key Persons**. Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor’s Key Persons identified in Exhibit E. 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 Agency. Further, Contractor shall not re-assign or transfer a Key Persons to other duties or positions such that the Key Person is no longer available to provide Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency’s written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace Key Persons without Agency’s consent in the event any Key Persons are no longer available due to circumstances beyond Contractor’s reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons, Agency may interview, review the qualifications of, and approve or reject the proposed replacement(s) for the Key Persons. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency will thereafter be deemed a Key Person for purposes of this Contract and Exhibit E deemed amended to include such Key Person. Agency reserves the right to determine if a replacement Key Person has acquired the project knowledge and skills necessary to perform within the twenty-eight (28) Calendar Day period following Agency approval of the replacement Key Person.
      1. Contractor shall not charge Agency, and Agency will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the parties, and will last for a minimum of fourteen (14) Calendar Days but not more than twenty-eight (28) Calendar Days, and will be reflected as an adjustment to a fee for a Deliverable associated with the replacement Key Person’s Services.
   2. **Project Manager**. Contractor shall designate a Project Manager as a Key Person for the Services. The Project Manager shall be familiar with Agency’s business operations and objectives. The Project Manager will participate with Agency in periodic review sessions and will provide at Agency’s request detailed progress reports that identify completed tasks and the status of the Services and Deliverables.
   3. Service Manager. Contractor shall designate a Service Manager as a Key Person for the operations and maintenance phase of the Services. The Service Manager shall be familiar with Agency’s business operations and objectives. The Service Manager will participate with Agency in regular meetings to be held, at least quarterly unless requested more frequently by Agency, at Agency’s offices in Salem, Oregon. The Service Manager must:
      1. Provide measurement and monitoring reports to verify compliance with the Service Level Agreements;
      2. Review Solution and Contractor’s performance throughout the Contract and discuss possible improvements;
      3. Discuss changes and Enhancements to the Solution or any new technologies that may be available for Agency;
      4. Discuss any other Agency-raised issues or concerns; and
      5. Provide at Agency’s request such other reports as Agency may request.
   4. **Contractor’s Employees and Subcontractors**. Contractor shall not use subcontractors to perform the Services without Agency’s prior written consent. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services, will perform the Services in accordance with the warranties set forth in Section 11 of this Contract.
   5. **Anti-Discrimination.** Contractor certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.212 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Contract, to maintain such policy and practice in force during the entire Contract term. Contractor’s failure to maintain such policy and practice constitutes a breach entitling Agency to terminate this Contract for cause.
   6. **Pay Equity.** As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and not unlawfully discriminate against any of its employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor’s compliance with this section is a material term of this Contract, and Contractor’s failure to comply constitutes a breach entitling Agency to terminate this Contract for cause.
      1. As required by ORS 279B.235, Contractor may not prohibit any of its employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor shall not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.
2. **INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING**.
   1. **Independent Contractor**. Contractor shall perform all Services as an independent contractor. Although Agency reserves the right to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor’s performance. Contractor is responsible for determining the appropriate means and manner of performing the Services. Contractor declares and certifies by execution of this Contract that it is not an “officer,” “employee,” or “agent” of Agency, as those terms are used in ORS 30.265.
   2. **No Partnership**. This Contract is not intended, and will not be construed, to create a partnership or joint venture between State and Contractor. Nothing in this Contract will be construed to make State and Contractor partners or joint venture participants.
   3. **Declaration and Certification as to Conflict of Interest**. 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 or Key Persons who will perform Services under this Contract;(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; and (iii) this Contract and the delivery of Services creates no other violation of ORS Chapter 244 for Contractor, its employees, agents, or contractors.
   4. **Responsible for Taxes**. Contractor is responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation and payments any amount to cover Contractor’s federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers’ compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.
   5. **Compliance with Tax Laws**. Contractor shall, throughout the duration of this Contract, comply with all tax laws of the State and all applicable tax laws of any political subdivision of the State. Any violation of this section or of Contractor’s warranty in Section 11.1.7 constitutes a material breach of this Contract. Any violation of this section or Section 11.1.7 entitles State to terminate this Contract, to pursue and recover damages that arise from the breach and the termination of this Contract, and to pursue all other remedies available under this Contract, at law, or in equity.
   6. **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.
   7. **Disclosure of Social Security Number**. Contractor shall provide Contractor’s Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.
3. **COMPENSATION**.
   1. **Maximum Compensation**. Notwithstanding any other provision of this Contract to the contrary, the maximum, not-to-exceed compensation that Agency will pay to Contractor is \_\_\_\_\_Dollars ($\_\_\_\_\_) (the “Maximum Not-To-Exceed Compensation”), which includes payment for any allowable expenses for which Contractor may request reimbursement under this Contract.
   2. **Payments**. Payments are subject to all provisions of this Section 6.
      1. **Payment of Fixed Prices**. Payments are Deliverable-based. Agency will pay to Contractor the fixed price listed in Exhibit K for each Deliverable completed, delivered to, and Accepted by Agency.
      2. **Payment for Hardware**. Subject to the parties’ agreement that Contractor will provide any hardware under this Contract, Agency will pay Contractor for any hardware delivered under this Contract upon Agency’s Acceptance of the hardware in accordance with the prices and delivery terms negotiated by the parties and memorialized in this Contract.
      3. **Payment for** **Software**. Subject to the parties’ agreement that Contractor will provide any Software under this Contract, Agency will pay Contractor for Software, including Third Party Intellectual Property (third party software), required and delivered under this Contract, upon Acceptance of such Software in accordance with the prices and delivery terms negotiated by the parties and memorialized in this Contract.
      4. **Payment for Contractor-Provided Project Facility, Office Equipment, Furniture and Furnishings**. Agency will pay Contractor for the Project Facility, including office equipment, furniture, and furnishings provided by Contractor under the Contract, in accordance with the prices and terms in this Contract.
   3. **Retention Amount.** 
      1. **Retention Amount for Services**. Agency may hold back an amount (the "Retention Amount") of not more than ten percent (10%) of any amount that is payable by Agency to Contractor. Agency will pay the then-accrued Retention Amount to Contractor within thirty (30) Calendar Days following Final Acceptance.
      2. **Retention Amount for Hardware and** **Software**. No retention amount will be withheld for purchases of hardware or licenses for Third Party Intellectual Property.
      3. **Retention Amount for Facilities, Equipment.** No retention amount will be withheld from payments to Contractor for the costs of facilities and equipment.
   4. **Expenses**. Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement Work and Exhibit K. Any such authorized travel expenses must comply with the Oregon Travel Policy, https://www.oregon.gov/das/financial/acctng/pages/travel.aspx, including as updated.
   5. **Invoices**. Agency will pay Contractor not more than once each month upon Contractor’s submission of a detailed invoice that sets forth the Services performed and Deliverables Accepted by Agency. Such invoices must comply with the requirements of this Section 6, identify the Deliverables completed and Accepted for which Contractor seeks compensation, and itemize and explain all authorized expenses for which reimbursement is claimed. [The invoices must also include the total amount invoiced to date by Contractor prior to the current invoice.] Contractor shall submit invoices to Agency’s Authorized Representative (or delegate). Agency has the right to review each such invoice for compliance with the requirements of this section and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462.
   6. **Limit on Payments**. Contractor shall not submit invoices for, and Agency will not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Contract pursuant to Section 7, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or goods delivered before the Effective Date or after termination of this Contract.
   7. **Funds Available and Authorized**. Contractor will not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon. Agency believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within Agency’s biennial appropriation or limitation. Contractor understands and agrees that Agency’s payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.
   8. **Contractor or Subrecipient Determination**.

In accordance with the Oregon State Controller’s Oregon Accounting Manual, policy 30.40.00. 104, Agency’s determination is that:

Recipient is a subrecipient  Recipient is a contractor

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Contract: XX.XXX

1. **AMENDMENTS**. This Contract may be amended, modified, or supplemented only by a written amendment signed by State and Contractor that, if required by applicable law, has been approved by DAS and for legal sufficiency by DOJ. Any amendment that provides for additional goods or Services may only provide for goods or Services directly related to the scope of goods and Services described in the RFP, and no amendment will be effective until all requisite signatures and approvals are obtained. Either Agency or Contractor may request a change to this Contract, including all exhibits hereto, by submitting a written proposal describing the desired change to the other party.
   1. **Change Control**. Subject to the conditions above, amendments to an Exhibit A Statement of Work, Exhibit B, Service Level Agreements and Performance Standards, and to related costs may be managed through an Agency-authorized change control process that reflects at least the processes described in this section. Either Agency or Contractor may request a change by submitting a written proposal describing the requested change to the other party. Agency’s and Contractor’s Authorized Representatives will review the written change request and either approve it for further analysis or reject it.
      1. **Analysis of Change Requests; Change Orders**. If both parties approve the written change request, the parties will analyze each change request (that has not been rejected) in accordance with the authorized change control process to determine the effect that the implementation of the change will have on the Statement of Work or Service Level Agreement, and related costs. If Contractor requests to make changes to meet Statement of Work requirements, such changes will be made at no cost to Agency, unless such changes are due to the failure of Agency or its agents to perform their responsibilities in a timely manner. If the analyzed change request is mutually approved, the agreed-upon party will prepare a written change order, detailing all modifications to the Statement of Work or Service Level Agreement or Performance Standard and related costs (the “Change Order”). A Change Order at a minimum must contain:
         1. The effective date of the Change Order;
         2. A detailed description of the Services to be performed under the Change Order;
         3. The particular specification or matter in the Contract which will be altered, and the precise scope of that alteration;
         4. Whether the Change Order modifies critical path Deliverables or Milestones;
         5. Any change in the cost of the Services to be performed pursuant to the Change Order; and
         6. The cumulative cost changes of all Change Orders previously issued.
      2. A Change Order may alter only that portion of a Statement of Work or to a Service Level Agreement, or a Performance Standard and related costs to which it expressly relates and must not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Contract. No Services may be performed pursuant to the Change Order and no payment will be made on account of the Change Order until the Change Order is fully executed and all required State of Oregon approvals are received.
      3. **Payments**. Subject to the foregoing provisions of this Section 7.1 and performance of the Services, Agency will pay for Services performed pursuant to a Change Order according to the acceptance and payment procedures set forth in this Contract.
2. **OWNERSHIP AND LICENSES**.
   1. **Contractor Intellectual Property**. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Agency pursuant to the Services performed under this Contract. Contractor grants Agency a license to Contractor Intellectual Property as set forth in Exhibit G. In the event that Work Product is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property, or a compilation that includes Contractor Intellectual Property[ and provided Agency has paid any applicable licensing fee], Contractor grants Agency a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency’s behalf.
   2. **Work Product**. 
      1. **State owns all Work Product.** The State of Oregon has all right, title, and interest (including ownership of copyright and trademark) to Work Product. All Work Product is “work made for hire” of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not “work made for hire” Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product delivered under this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Contractor shall execute such further documents and instruments to fully vest such rights in Agency. Contractor waives any and all rights relating to Work Product created pursuant to this Contract, 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.
      2. **Agency Data.** Agency owns all Agency Data, including Agency Data that is Work Product or that is otherwise created by or resulting from the Services. Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Agency Data, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Contractor shall execute such further documents and instruments to fully vest such rights in Agency.
      3. **Federally Funded Work Product.** [Agency has all right, title, and interest (including ownership of copyright and trademark) to Work Product for which it pays, to any extent, with federal funds.] Work Product is funded by Agency with federal funds provided by [federal agency]. [Federal agency] reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for federal government purposes, such Work Product.

* + - 1. Agency grants Contractor a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, execute, perform, modify, display, distribute, and transmit Work Product developed with federally funds to other government entities, and to prepare derivative works of Work Product developed with federally funds, and to authorize others to do the same on Contractor’s behalf, for other government entities.
      2. Contractor shall not charge a development, licensing, or user fee to any state, federal, or local government entity when distributing copies of, and transferring or sublicensing rights to, the federally funded Work Product to such entity. Contractor may recover costs of transferring or making such Work Product available from the receiving entity. For purposes of Section 8.2.3, Contractor’s exercise of its right to transfer or sublicense according to this section will be considered an activity performed by Contractor under this Contract.
  1. **Third Party Intellectual Property**. Unless otherwise specified in a Statement of Work that Agency, on its own, will acquire and obtain a license to Third Party Intellectual Property, Contractor shall secure on Agency’s behalf, in the name of Agency and subject to Agency’s approval, a license to Third Party Intellectual Property provided to Agency by Contractor during the term of the Contract necessary for Contractor to deliver Contract Services and Deliverables. Licenses for Third Party Intellectual Property are set forth in Exhibit H, and Exhibit H will be deemed to include any additional licenses for Third Party Intellectual Property approved by Agency. In the event that Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Contractor shall secure on Agency’s behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency’s behalf.
  2. **Open Source Elements**. Any open source materials in the Deliverables for which Agency may be subject to a license must be approved in advance and in writing by Agency. If Contractor desires to include open source materials, Contractor shall: 
     1. Notify Agency in writing that Contractor intends to include open source materials in a Deliverable,
     2. Identify the specific portion of the Deliverable that contain open source materials, and
     3. Provide a copy of the applicable license for each open source item to Agency.
  3. **Agency Intellectual Property**. Agency owns all Agency Intellectual Property, including Agency Data, provided to or collected by Contractor pursuant to this Contract. Agency grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Agency Intellectual Property, including Agency Data and Work Product only to fulfill the purposes of this Contract. Agency’s license to Contractor is limited by the term of the Contract and the confidentiality obligations of this Contract.
  4. **No Rights**. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.
  5. **No Rights in Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.
  6. **Competing Services**. Subject to the provisions of this Section 8, and Contractor’s obligations with respect to Confidential Information, including as defined in Section 9, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables. Each party is free to utilize any concepts, processes, know-how, techniques, improvements, or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.
  7. **Software Escrow**.
     1. Within thirty (30) Calendar Days of a written request from Agency to arrange for software escrow, Contractor shall propose to Agency a mutually agreeable, commercially reasonable arrangement to escrow (collectively, “Deposited Programs”):
        1. The source code for Contractor Intellectual Property and Third Party Intellectual Property (to the extent such Third Party Intellectual Property source code can be obtained using commercially reasonable efforts) (collectively, the “System Software”) as are required for the Solution to function, in such format that will allow Agency to build and compile useful object code;
        2. Any and all updates, modifications, revisions, and enhancements of the Solution Software; and
        3. Any and all Documentation pertaining to source code for the Solution Software, including the technical specifications and documents, data conversion guidelines and instructional tools.
     2. Upon the parties’ acceptance and written approval of such proposed escrow arrangement and its approval by DAS, DOJ and the federal government if required, Contractor and Agency will promptly execute a three party escrow agreement with the selected escrow agent which will govern the terms of the escrow arrangement. The escrow agreement must authorize the escrow agent to release the Deposited Programs to Agency upon the occurrence of any of the following:
        1. Source code for any or all material part of the Deposited Programs is generally made publicly available by Contractor, with or without additional cost, to other users of comparable software; or
        2. Contractor's cessation, for any reason, to do business; or
        3. Contractor discontinues offering maintenance services for the Deposited Programs; or
        4. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, and same has not been discharged or terminated without any prejudice to Agency’s rights or interests under this Contract within sixty (60) Calendar Days; or
        5. Any other event or circumstance occurs that demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to Agency under this Contract, the escrow agreement or any maintenance or support agreement between the parties.
     3. **Contractor shall pay the fees of the escrow agent**. The copies of the Deposited Programs placed in escrow must be reproduced and maintained on magnetic tape or disk using a commonly accepted data recording protocol. When a change is made to the Deposited Programs by or on behalf of Contractor, during the term of the escrow agreement, the revised Deposited Programs, including the change, must be delivered to the escrow agent not later than sixty (60) Calendar Days after the change is effected by or on behalf of Contractor. Contractor shall allow Agency to periodically examine the escrowed source code for the Deposited Programs to verify it is current and complete.
     4. Upon receipt of the Deposited Programs by Agency pursuant to the escrow agreement entered into under this section, Agency shall treat the Deposited Programs as confidential information to the fullest extent authorized by the Oregon Public Records Law. Ownership of the Deposited Programs will be in accordance with [Sections 8.1 through 8.8] unless ownership is specifically transferred otherwise. Upon release of the Deposited Programs as provided for herein, Agency and its consultants and contractors will have a perpetual, irrevocable license to use, reproduce, prepare derivative works based on, perform and display the Deposited Programs in conjunction with and to update, modify, and otherwise support the Solution.
  8. **Ownership of Hardware**. Unless agreed otherwise, all hardware delivered to Agency by Contractor will be owned exclusively by Agency. Title to the hardware will pass on the date of Final Acceptance, unless otherwise agreed upon by the parties.
  9. **Purchase or Lease of Office Equipment, Furniture and Furnishings for the Project Facility**. If Contractor purchased Project Facility office equipment, furniture, and furnishings, Contractor shall transfer ownership of all items purchased to Agency upon termination or expiration of the Contract. For any Contractor leased equipment returned to the leasing vendor, Contractor shall ensure compliance with all security requirements, including Section 9.

1. **CONTRACTOR’S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE**.
   1. **Confidential Information**. Contractor acknowledges that it and its employees, agents, or subcontractors may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency’s clients. Any and all information of any form obtained by Contractor or its employees, agents, or subcontractors in the performance of this Contract, including Agency Data, is deemed to be confidential information of Agency (Confidential Information). Contractor shall treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not to include information that: (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
   2. **Non-Disclosure**. Contractor, its employees, agents, and subcontractors shall hold Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at Agency’s request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.
   3. **Privacy** **and Security Requirements**. Contractor and its employees, agents, and subcontractors shall comply with laws, regulations, and policies governing access to and use of Agency Data, including as required in the Privacy and Security Exhibit attached as Exhibit J, as they are stated elsewhere in this Contract, and as such laws, regulations, and policies are updated or otherwise made available to Contractor.
   4. **Non-Disclosure Agreement.** Contractor shall upon Agency’s request obtain executed non-disclosure agreements from Contractor’s employees, agents, and subcontractors performing Services under this Contract.
   5. **Background Checks**. Contractor’s employees, agents and subcontractors that will perform Services under this Contract must submit to a background check conducted by the State. Such background check must occur prior to arrival on Agency premises or other State facilities, or prior to access of Agency Confidential Information, whichever occurs first. Background checks will be performed at [whose] expense. Agency in its sole discretion has the right to reject any Contractor employee, agent, or subcontractor, or limit any such person’s access to State systems or premises based on the results of the background check.
   6. **Confidentiality Policies**. Contractor shall, upon Agency’s request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency’s review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.
   7. **Injunctive Relief**. Contractor acknowledges that breach of this Section 9, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.
   8. **Publicity**. Contractor agrees that it will not disclose the form, content or existence of this Contract or any Deliverable in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Contractor’s services, without the prior written consent of Agency.
2. **CONTRACTOR’S PROPRIETARY INFORMATION; OREGON PUBLIC RECORDS LAWS.** Agency will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Contract and applicable state and federal law. Contractor acknowledges and agrees that any obligation of Agency to maintain the confidentiality of Contractor’s proprietary information is conditioned by and subject to Agency’s obligations under the Oregon Public Records Laws, including ORS 192.311 to 192.478, which may require disclosure of proprietary information as a “public record” unless exempt under ORS 192.501 or ORS 192.502, and the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170.
   1. Contractor proprietary information is any information marked or designated in writing by Contractor as “confidential” prior to initial disclosure, or information disclosed orally that is confirmed in writing as “confidential” within 10 (ten) Calendar Days of disclosure.
   2. Agency may disclose Contractor proprietary information to its third party Quality Assurance contractor, and to State and federal oversight authorities to make required reports, to comply with requests for information, or to comply with an audit.
   3. Agency may disclose and provide copies of Contractor proprietary information to the extent disclosure is required by the Oregon Public Records Law (including ORS 192.311 to 192.478). If Agency receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor proprietary information, Agency will notify Contractor within a reasonable period of time of the request. Contractor is exclusively responsible for defending Contractor’s position concerning the confidentiality of the requested information. Notwithstanding the foregoing, while Agency is not required to actively assist Contractor in opposing disclosure of proprietary information, Agency will cooperate in good faith to the extent reasonably practicable with Contractor’s efforts to protect its proprietary information.
   4. The confidentiality obligations imposed by this Section 10 do not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information known to the recipient prior to the effective date of this Contract without obligation of confidentiality; (iv) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Agency is required to disclose Contractor proprietary information under clause (v), Agency will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.
   5. **Injunctive Relief**. Agency acknowledges that Agency’s use and disclosure of Contractor’s proprietary information not in accordance with this Section 10 will cause irreparable injury to Contractor that is inadequately compensable in damages. Accordingly, Contractor may seek and obtain injunctive relief against the breach or threatened breach of this Section 10. Agency acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Contractor and are reasonable in scope and content.
3. **CONTRACTOR’S REPRESENTATIONS AND WARRANTIES.** 
   1. **Contractor’s** **General Representations and Warranties**. Contractor represents and warrants to Agency that:
      1. Contractor has the power and authority to enter into and perform this Contract.
      2. This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms.
      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.
      4. Contractor is not in violation of, charged with nor, to the best of Contractor’s knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor’s provision of the Services will not violate any such law, ordinance, regulation or order.
      5. Contractor’s performance under this Contract to the best of Contractor’s knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel or Key Persons that will perform Services under this Contract, and creates no other violation of ORS Chapter 244 for Contractor, its agents, or contractors.
      6. The Certification Statement For Independent Contractor in the form attached hereto as Exhibit D, is true and accurate as of the Effective Date, and Contractor will notify Agency in writing if the information or certification changes during the term of this Contract such that the attached Exhibit D is no longer true and accurate.
      7. To the best of Contractor’s knowledge, after due inquiry, for a period of no fewer than six (6) calendar years preceding the Effective Date, faithfully has complied with:
         1. All tax laws of the State, including but not limited to ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue;
         2. Any tax provisions imposed by a political subdivision of the State that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor;
         3. Any tax provisions imposed by a political subdivision of the State that applied or apply to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
         4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
      8. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
   2. **Contractor’s Performance Warranties.** Contractor represents and warrants to Agency that:
      1. Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor’s employees and any authorized subcontractors perform the Services described in this Contract in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Agency pursuant to this Contract.
      2. Through the expiration of the Warranty Period, all Deliverables delivered by Contractor to Agency, will materially conform to Acceptance Criteria set forth in this Contract, including the Statement of Work and any Documentation provided by Contractor, and be free from error or defect that materially impairs their use, and be free from material defects in materials, workmanship, or design.
      3. Contractor shall comply with the standards established by the Project Management Institute (PMI) as described in the current Project Management Body of Knowledge (PMBOK), the Software Engineering Institute and the Control Objectives for Information and related Technology (COBIT®) objectives, as well as standards established by DAS for quality assurance services.
      4. Contractor shall comply with the applicable requirements set forth in DAS Oregon Statewide IT and Information Security Policies, found at https://www.oregon.gov/das/Pages/policies.aspx#IT, as those policies are amended from time to time. In the event of a DAS IT Policy amendment that impacts the Services, the required change will be managed according to the Change Control process in Section 7.1 of this Contract.
      5. Except as otherwise provided in this Contract, Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.
      6. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.
      7. Contractor will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program that at minimum complies with the requirements of the Oregon Consumer Information Protection Act (ORS 646A.600 et. seq.) to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control.
      8. The Solution is free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that hampers performance of the Solution, unlawfully collects any information on users, or prevents the Solution from performing as required under the terms and conditions of this Contract. [Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Services that is expressly permitted by the terms and conditions by the license under which it was provided.]
      9. Contractor shall comply with
   3. **WARRANTIES CUMULATIVE**. THE WARRANTIES SET FORTH IN THIS CONTRACT ARE CUMULATIVE AND DO NOT LIMIT AGENCY’S REMEDIES UNDER THIS CONTRACT OR AT LAW. The warranties stated above do not apply to the extent that there has been misuse of the relevant Deliverable, other than that authorized by Contractor in writing, accident, modification, or failure or damage caused by a product or entity for which Contractor is not responsible.
4. **INDEMNITIES.** 
   1. **General Indemnity**. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever, including personal injury, death, damage to real property and damage to tangible or intangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract, including: (i) any claim that Contractor, a subcontractor, or Contractor’s staff or a subcontractor’s staff are employees of the State or Agency for any reason, and (ii) any claim against the State or Agency, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this Contract. Without limiting the generality of the foregoing, Contractor will have no obligation to indemnify Agency or the State of Oregon from and against any claims, suits, actions, losses, damages, liabilities, costs, and expenses attributable solely to the acts or omissions of Agency or the State of Oregon, and their officers, employees, or agents.
   2. **IP Indemnity**. In addition to and without limiting the generality of Section 12.1, Contractor expressly agrees to indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables or Solution or Agency’s use thereof infringes or violates 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 Solution or one or more Deliverables infringe a third party’s Intellectual Property Rights, Contractor may upon receipt of Agency’s prior written consent, which Agency will not unreasonably withhold: (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Agency the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Deliverable(s) and Solution continues to function in material conformance with the specifications and meet the Acceptance Criteria set forth in this Contract. Contractor’s failure or inability to accomplish any of the foregoing will be deemed a material breach of this Contract, and State may pursue any rights and remedies available to it under this Contract, including termination. Contractor will not be liable under this Section 12.2 for any claim for infringement based solely on the following:
      1. Agency’s modification of the Deliverables or Solution other than as contemplated by this Contract, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing;
      2. Use of the Deliverables or Solution in a manner other than as contemplated in this Contract, its specifications, or as otherwise authorized by Contractor in writing; or
      3. Use of the Deliverables or Solution in combination, operation, or use of with other materials or products other than as contemplated by this Contract, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing.
   3. **Control of Defense and Settlement**. Contractor’s obligation to indemnify State as set forth in Sections 12.1 and 12.2 is conditioned on Agency providing to Contractor prompt notification of any claim or potential claim of which Agency becomes aware that may be the subject of those sections. Contractor will have control of the defense and settlement of any claim that is subject to Section 12.1 or Section 12.2; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor will Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon’s interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
   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 or intangible 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
   5. **Data and Network Services.** Except to the extent that a claim or loss results from the negligent, reckless, or intentional acts or omissions of Agency, Contractor shall assume liability for all claims or losses related to data loss or breach of security caused directly or indirectly by or resulting from the Deliverables or Services provided by Contractor.
   6. **Insurance**. Contractor shall provide insurance as required by Exhibit C.
5. **LIMITATION OF LIABILITY.**
   1. EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO: (i) SECTION 12.1, GENERAL INDEMNITY (ii) SECTION 12.2, IP INDEMNITY (iii) SECTION 12.5, DATA AND NETWORK SERVICES (iv) SECTION 9, CONTRACTOR’S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE, (v) SERVICE CREDITS OR LIQUIDATED DAMAGES ASSESSED UNDER THIS CONTRACT OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR’S LIABILITY FOR DAMAGES TO THE STATE FOR ANY CAUSE WHATSOEVER IS BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED COMPENSATION UNDER THIS CONTRACT.
   2. EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO: (i) SECTION 12.1, GENERAL INDEMNITY (ii) SECTION 12.2, IP INDEMNITY (iii) SECTION 12.5, DATA AND NETWORK SERVICES, (iv) SECTION 9, CONTRACTOR’S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE OR (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.
6. **EVENTS OF DEFAULT.**
   1. **Default by Contractor**. Contractor will be in default under this Contract if:
      1. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within sixty (60) Calendar Days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
      2. Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within thirty (30) Business Days after delivery of Agency’s notice or such longer period as Agency may specify in such notice; or
      3. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) Business Days after delivery of Agency’s notice or such longer period as Agency may specify in such notice; or
      4. Contractor has liquidated and delinquent debt owed to State or any department or agency of State.
   2. **Default by Agency**. Agency will be in default under this Contract if:
      1. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor’s notice or such longer period as Contractor may specify in such notice; or
      2. Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor’s notice or such longer period as Contractor may specify in such notice.
7. **REMEDIES.**
   1. **Agency’s Remedies**. If Contractor is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, which include, without limitation:
      1. Require Contractor to stop work under Section 17;
      2. Terminate this Contract under Section 16.2;
      3. Withhold or offset payment for erroneous invoices or for Services that Contractor is obligated but has failed to perform in accordance with this Contract, including warranties in Section 11;
      4. With respect to Services and Deliverables for which Agency has paid before Final Acceptance, reject the Services and Deliverables for which Agency has paid, in exchange for a return of all moneys previously paid for such Deliverables and Services, and initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;
      5. Assess damages resulting from Contractor’s failure to provide Deliverables and Services as and when required by a Statement of Work, or resulting from Contractor’s failure to meet the performance metrics specified in Exhibit B;
      6. Exercise of its right of setoff;
      7. Undertake collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to State or any department or agency of State. Offsets or garnishment may be initiated after Contractor has been given notice if required by law; and
      8. Pursue the tax compliance remedies described in Section 18.
   2. **Agency Remedies for Repetitive Service Level Agreement or Performance Standard Failures.** Notwithstanding the right of Agency to receive service credits or assess liquidated damages, Agency will have the right to pursue remedies for breach of contract if Contractor commits a material breach of the performance standards set forth in this Contract, including a Statement of Work and the Service Level Agreements and Performance Standards. A material breach of performance standards includes repeated or excessive failures to meet any individual or combination of performance standards or Service Level Agreements. A cure period is not required in the event of repeated or excessive failure to meet performance standards or a Service Level Agreement.
   3. **Tax Compliance Remedies.** The Oregon Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing Contractor’s compensation under this Contract or (ii) exercising a right of setoff against Contractor’s compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.
   4. **Remedies Cumulative**. These Agency remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Section 14.1, the rights and obligations of the parties will be the same as if this Contract was terminated pursuant to Section 16.1.
   5. **Contractor’s Remedies**. In the event Agency terminates this Contract as set forth in Section 16.1, or in the event Agency is in default under Section 14.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 16.3, Contractor’s sole monetary remedy[ except as set forth in Section 15.5.1,] will be a claim for (i) any unpaid invoices for Deliverables completed, delivered and Accepted; and, (ii) for incomplete Deliverables, an amount calculated by determining the percentage of Services completed for each unpaid Deliverable and applying that percentage to the fixed price for the Deliverable as set forth in the applicable Statement of Work, and any authorized expenses incurred. If previous amounts paid to Contractor exceed the amount due to Contractor under this section, Contractor shall pay any excess to Agency upon written demand.
      1. In the event Agency terminates this Contract under Section 16.1, and Contractor elects to terminate its lease agreement on the Project Facility, or agreement for the lease or rental of office equipment, furniture and furnishings, in addition to the claim described in Section 15.5, Contractor will be entitled to recover from Agency the amount of any early termination fee, including fees for early termination of furniture or equipment leases actually imposed on Contractor due to Contractor’s termination of such leases during the current biennium, provided that in no event will Agency’s liability for Contractor’s early termination fees under the leases exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_. For the purposes of this Section 15.5.1, and subject to Agency’s maximum liability stated in the preceding sentence, early termination fees include any remaining amounts Contractor is obligated to pay following the termination of the Contract under purchase agreements covering the purchase of the Project Facility’s office equipment, furniture or furnishings if Agency has approved the purchase, instead of the lease, of such items.
8. **TERMINATION****.**
   1. **State’s Right to Terminate**. State may, at its sole discretion, terminate this Contract, as follows:
      1. DAS PS may terminate this Contract upon at least thirty (30) Calendar Days’ prior written notice to Contractor.
      2. Agency may terminate this Contract if Agency fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for Contractor’s Services.
      3. Agency may terminate this Contract if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited or Agency is prohibited from paying for such Services from the planned funding source.
      4. Agency may terminate this Contract if it does not receive authorization from EIS to continue with the Solution or the Services, or EIS authorization is withdrawn or modified in a way that Contractor’s performance under this Contract is prohibited or no longer in the best interest of the State.
   2. **State’s Right to Terminate for Cause**. In addition to any other rights and remedies State may have under this Contract, DAS PS may terminate this Contract, in whole or in part, immediately upon written notice to Contractor of Contractor’s default under Section 14.1.
   3. **Contractor’s Right to Terminate for Cause**. Contractor may terminate this Contract upon Agency’s default under Section 14.2.
   4. **Mutual Termination.** The parties may agree to terminate this Contract upon at least thirty (30) Calendar Days’ prior written agreement.
   5. **Extension of Termination Date.** In addition to Agency’s right to extend the term of the Contract under Section 7, Agency may extend the effective period of the Contract one or more times as it elects in its discretion, provided that the total of all such extensions does not exceed 180 (one hundred eighty) Calendar Days following the termination date in place immediately prior to the initial extension under this section. Agency will provide notice of an extension under this section to Contractor within thirty (30) Calendar Days of the then-scheduled Contract termination date.
   6. **Disposition and Return of Property**. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency’s property, which includes Agency’s Confidential Information, and any Deliverables for which Agency has made payment in whole or in part that are in the possession or under the control of Contractor in a format that is acceptable to Agency. Contractor shall also promptly comply with the applicable provisions of Exhibit J with respect to Agency Data.
      1. Any property or Deliverable returned or delivered to Agency pursuant to this section may be provided without the warranties set forth in Section 11.2, unless the Deliverable is Accepted.
      2. Contractor shall maintain protections required by law or this Contract for any retained Agency property for so long as Contractor (including through any third party) retains it.
9. **Stop-Work Order**. Agency may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work required by this Contract for a period of up to ninety (90) Calendar Days after the date of the notice, or for any further period to which the parties may agree. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the Stop Work Order notice. Within a period of ninety (90) Calendar Days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Agency will either:
   1. Cancel or modify the Stop Work Order by a supplementary written notice; or
   2. Terminate the work under Section 16.1, 16.2, or 16.4, Termination.
   3. If the Stop Work Order is canceled, or Agency issues a notice directing Contractor to resume Services, Agency may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete the Services and the Contract price by a duly executed amendment, inclusive of any ramp-up time required. Any such Contractor request must be in the form of a Change Request under Section 7.1 and must be received by Agency within ten (10) Business Days of Agency’s notice canceling the Stop Work Order or directing Contractor to resume Services.
10. **COMPLIANCE WITH APPLICABLE LAW**. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract, including as required under this section [and Exhibit I, Federal Terms and Conditions].
    1. **Compliance with Law Generally**. Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA); (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency’s performance under the Contract is conditioned upon Contractor’s compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.
    2. **Oregon False Claims Act.** Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, which constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.
    3. **Tax Compliance.** Contractor certifies that it has complied with the tax laws of the State and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, “tax laws” includes: (i) All tax laws of this state, including but not limited to ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
       1. Any failure to comply with the provisions of this subsection 18.3 constitutes a material breach of this Contract. Further, any failure to comply with Contractor’s warranty in Section 11.1.7 or 11.1.8 also constitutes a material breach of this Contract. Any failure to comply entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:
          1. Termination of this Contract, in whole or in part;
          2. Exercise of the right of setoff, or garnishment as applicable, and withholding of amounts otherwise due and owing to Contractor, without penalty; and
          3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency may recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.
    4. This Contract will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing Contractor’s compensation under this Contract or (ii) exercising a right of setoff against Contractor’s compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.
    5. **Response to Public Records Request for Agency Data.** [The Solution is the system of record for Agency Data.] Agency, as an executive department agency of State, must respond to requests for Agency Data and other public records under Oregon’s Public Records laws, including ORS 192.311 to 192.478, within set timeframes. Contractor shall support the ability of [Agency / DASPS] to respond to public records requests for Agency Data in accordance with applicable law.
    6. **Changes in Law Affecting Performance.** Each party hereby agrees to immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Contract. Each party shall monitor changes in federal and state laws, ordinances, and regulations applicable to its performance hereunder, and will be deemed aware of such changes within thirty (30) Calendar Days of the enactment of any such change.
11. **DISPUTE RESOLUTION**.
    1. **Litigation**. Any claim, action, suit, or proceeding (collectively, “Claim”) between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Contract be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.
    2. **Governing Law**. This Contract is governed by, construed, and enforced in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.
12. **ORDER OF PRECEDENCE**. This Contract consists of the following documents that are listed in descending order of precedence:

The terms and conditions of this Contract, less its exhibits;

Exhibit I, Federal Terms and Conditions;

Exhibit J, Privacy and Security Exhibit[, including its subparts and any attachments];

Exhibit L, Solution Requirements;

Exhibit A, Statement of Work, including its subparts and any attachments;

Exhibit B, Service Level Agreements and Performance Standards;

Exhibit C, Insurance;

Exhibit G, License for Contractor Intellectual Property, and Exhibit H, License for Third Party Intellectual Property;

Exhibit K, Payment Schedule;

Exhibit E, Certification Statement For Independent Contractor;

Exhibit E, Contractor’s Personnel / Authorized Representative / Key Persons; and

Exhibit F, Agency’s Personnel / Authorized Representative.

* 1. The aforementioned exhibits are by this reference incorporated into this Contract. To the extent provisions contained in more than one of the foregoing documents apply in any given situation, the parties agree: (i) to read such provisions together whenever possible to avoid conflict, and (ii) to apply the foregoing order of precedence only in the event of an irreconcilable conflict.

1. **RECYCLING**. To the maximum extent economically feasible in the performance of the Contract Contractor shall use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii).
2. **RECORDS MAINTENANCE AND ACCESS**. Contractor shall maintain all financial records and other records relating to its performance under this Contract in such a manner as to clearly document Contractor’s performance. Financial records must be kept in accordance with generally accepted accounting principles. Contractor acknowledges and agrees that Agency, the Oregon Secretary of State, the federal government, and their duly authorized representatives will have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, and to related systems and tools (including hardware and software), to perform examinations and audits and make excerpts and transcripts, including forensic data. Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.
3. **SURVIVAL**. All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 23, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, ownership and license of intellectual property and Deliverables, Contractor’s duties of confidentiality and non-disclosure, Contractor’s representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
4. **TIME IS OF THE ESSENCE**. Contractor agrees that time is of the essence under this Contract for critical path Deliverables and all Milestones identified in the Statement of Work.
5. **FORCE MAJEURE**. Neither Agency nor Contractor will be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay is wholly or principally caused by unanticipated acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Both parties will make all reasonable efforts to remove or eliminate such a cause of delay or default and upon the cessation of the cause diligently pursue performance of their respective obligations under this Contract. This provision does not excuse Contractor’s performance of its Disaster Recovery obligations.
   1. If a force majeure event causes Contractor to allocate limited resources among its customers, Contractor will not prioritize other customers over Agency. Contractor shall not reassign Key Persons to other customers during a force majeure event without Agency’s advance consent.
6. **NOTICES**. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing to Contractor at the address or number set forth on Exhibit E, and to Agency at the address or number set forth on Exhibit F, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. 
   * 1. Any communication or notice delivered by United States Postal Service, first class mail postage prepaid, will be deemed given five (5) Calendar Days after mailing.
     2. Any communication or notice delivered by facsimile will be deemed given when the transmitting machine generates receipt of the transmission. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to the Agency Authorized Representative.
     3. Any communication or notice delivered by email will be deemed given when the recipient responds with a receipt, which may be auto-generated. To be effective against Agency, such email transmission must be confirmed by telephone notice to the Agency Authorized Representative.
     4. Any communication or notice by personal delivery will be deemed given when actually received by the appropriate Authorized Representative.
7. **SEVERABILITY**. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.
8. **COUNTERPARTS**. This Contract may be executed in several counterparts, all of which when taken together constitute one contract binding on the parties, notwithstanding that the parties are not signatories to the same counterpart. Each copy of this Contract so executed constitutes an original.
9. **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 DAS PS’ prior written consent which will not unreasonably withheld. State consent to a subcontract or assignment does not relieve Contractor of any of its duties or obligations under this Contract. 
   1. Any proposed use of a subcontractor which is located outside the United States must be called to the specific attention of Agency. All Services must be performed by staff physically located within the United States or its territories.
   2. The assignment of this Contract in whole or in part to a successor organization by merger or acquisition does not require the consent of the other. Contractor is also permitted to assign its rights to payments without obtaining Agency’s consent.
10. **SUCCESSORS AND ASSIGNS**. The provisions of this Contract are binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.
11. **INTENDED BENEFICIARIES**. The State of Oregon and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
12. **WAIVER**. The failure of either party to enforce any provision of this Contract or the waiver of any violation or nonperformance of this Contract in one instance will not constitute a waiver by the party of that or any other provision nor will it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Contract will bind either party unless in writing and signed by both parties and, with respect to Agency’s waiver or consent, all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given.
13. **HEADINGS**. The headings in this Contract are included only for convenience and do not control or affect the meaning or construction of this Contract.
14. **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.
15. Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual’s knowledge that:
    1. 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;
    2. The individual signing on behalf of Contractor is authorized to act on Contractor’s behalf, has authority and knowledge regarding Contractor’s payment of taxes, and to the best of the signatory’s knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation: i) Those tax laws listed in ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that apply to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Contractor is an independent contractor as defined in ORS 670.600.
    3. The supplied Contractor tax identification numbers below are true and accurate.

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

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

**[CONTRACTOR], Contractor:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Signature: |  | | | | Date: | |  |
| Printed Name, Title: | | |  | | | | |
| Federal Tax ID: | |  | | Oregon Tax ID: | |  | |

**[Agency]:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature: |  | | Date: |  |
| Printed Name, Title: | |  | | |

**[Department of Administrative Services, Procurement Services]:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature: |  | | Date: |  |
| Printed Name, Title: | |  | | |

**LEGAL SUFFICIENCY APPROVAL:**

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: |  | Date: |  |

Matter:

# EXHIBIT A

# STATEMENT OF WORK

**EXHIBIT B**

**SERVICE LEVEL AGREEMENTS AND PERFORMANCE STANDARDS**

Contractor shall, at all times, comply with all Solution and operational performance requirements and expectations specified in the Contract, including all Requirements. Contractor warrants that the Solution will meet all requirements of the Contract, and all federal agency requirements.

1. **Overview.**
   1. **Assessment of Damages****.** The parties agree that Contractor’s failure to meet the performance metrics and Service Level Agreements stated in Exhibit A and this Exhibit B will result in damage to Agency. Where actual damage will be difficult to determine, Contractor shall pay to the State of Oregon, not as a penalty but as liquidated damages, the amounts specified in this Exhibit B as liquidated damages.
   2. The amounts stated for each occurrence of each performance failure define the maximum liquidated damages due from Contractor. Liquidated damages claimed will be adjusted downward to eliminate any proportion of the damage caused by Agency’s failure to meet its contractual responsibility.
   3. The damage remedies stated in this Exhibit B are in addition to any other remedy for damages provided in the Contract. If Agency recovers actual damages in addition to liquidated damages, Agency will reduce such actual damages by the amounts received as liquidated damages for the same events causing the actual damages.
   4. **Cure Period**. For performance requirements subject to a cure period, the Agency Project Manager will provide written notification of each failure to meet a performance requirement. Unless otherwise specified, Contractor will have five (5) Business Days, from the date of receipt of the written notification to perform to specifications to cure the failure. The State of Oregon may approve additional days at its discretion.
   5. In the event of Contractor’s failure to meet a performance metric or Service Level Agreement in either Exhibit A or Exhibit B, Agency may at its option:
      1. Assess and withhold from payments due Contractor under this Contract the amounts due for any damages or liquidated damages specified in this Exhibit B; or
      2. Make immediate demand on Contractor for payment of the damages and liquidated damages specified in this Exhibit B; or
      3. During the Operations & Maintenance period, accept a credit for Change Order services in lieu of assessing liquidated damages or damages for the following Service Level Agreements: System Availability, System Response Time, and Defect Service Level Agreement. The credit will be equal to the value of the liquidated damages.
   6. **Notice.** Agency will provide written notification of the intent to assess damages agreed upon in this Exhibit B ten (10) Calendar Days prior to assessment. The Agency Project Manager will notify Contractor, in writing, of any claim for damages or liquidated damages pursuant to this provision at least fifteen (15) Calendar Days prior to the date Agency deducts such sums from money payable to Contractor.
   7. **Payment.** Amounts due Agency from assessment of damages or liquidated damages are due within 30 (thirty) Calendar Days of demand by Agency unless Agency has exercised its option to deduct or accept as credit the amounts due from any money payable to Contractor pursuant to this Contract.
   8. Agency may, at its sole discretion, return a portion of collected damages as an incentive payment to Contractor for prompt and lasting correction of performance deficiencies.
2. **Monitoring and Reporting.**
   1. **Monitoring and audit by Agency.** All performance metrics and Service Level Agreements described in this Contract are subject to monitoring and audit by Agency. Agency reserves the right to monitor performance or audit records at any time and may exercise such option, at its discretion, without notice. Agency must be able to access such information online and in real-time, where feasible, at any time during the term of this Contract.
      1. Contractor shall provide tools and access in order for Agency to complete monitoring and audit activities. If Contractor fails to provide tools or access within five (5) Business Days of Agency request, Contractor will be deemed to have missed all unmonitored and unaudited performance metrics and Service Level Agreements for the month in which the failure to provide tools or access occurred.
   2. Contractor shall measure and report upon its performance against the performance metrics and Service Level Agreements as of the Effective Date, unless a different date for a specific metric is stated in the Contract or approved in writing by the Agency Authorized Representative. Contractor shall provide and implement measuring tools to measure and report upon each performance metric and Service Level Agreement on a monthly basis. These reports must show at least performance for the period being reported and trends over time.
   3. Contractor shall provide reports on its performance either as part of the periodic status reports required under specific Tasks or, if no status report is required or Agency approves in writing, under separate cover on a schedule and in a form approved by Agency.
   4. When Contractor is required to submit periodic status reports, and no reporting schedule is otherwise set in the Statement of Work or approved in writing by Agency, Contractor shall provide (i) a set of hard and a set of electronic reports on or before the tenth (10th) Business Day of the month following the month in which performance is measured, and (ii) identification of any damages payable to Agency for failure to meet a performance metric or Service Level Agreement.
      1. If Contractor fails to report on its actual performance by the fifteenth (15th) Business Day of the month in which the report is due, Contractor will be deemed to have missed all unreported metrics and service levels for the month.
3. **Modifications to Service Level Agreements.**
   1. Agency and the Contractor may add or modify performance metrics and Service Level Agreements in accordance with the Change Control process in Section 17.15 of this Contract. The parties agree that:
      1. Changes to service levels will be established based on current performance (at least three (3)months of data) and business requirements, and
      2. Additional requirements may be added based on business requirements.
   2. **Notice; Limit.** Agency will send written notice to Contractor at least thirty (30) Calendar Days prior to the date that a modification to a performance metric or a Service Level Agreement is to be effective, unless a shorter time frame is agreed upon by Contractor. Agency may send such a notice (which notice may contain multiple changes) not more than once every ninety (90) Calendar Days.
   3. Notwithstanding the foregoing, Agency may delete service levels at any time during the Term by sending written notice to Contractor.

1. **Project Facility Readiness.** 
   1. Performance Requirement

The Contractor-provided Project Facility must be fully functional and capable of being occupied by the Project Team within 135 (one hundred thirty five) Calendar Days of the Effective Date. “Fully functional” means that all Deliverables described in the Project Facility Task in the Statement of Work, including the Certificate of Occupancy and items necessary for Project staff to access the Project Facility (i.e., keys, badges), are delivered and meet their Acceptance Criteria within 135 (one hundred thirty five) Calendar Days of the Effective Date of this Contract.

* 1. Liquidated Damages

One thousand dollars ($1,000) as liquidated damages for each Business Day following the 135th (one hundred thirty fifth) Business Day after the Effective Date that the Project Facility is not fully functional and capable of being occupied by the Project Team. Liquidated damages for failure to provide the Project Facility will not exceed two hundred and fifty thousand dollars ($250,000).

1. **Final** **Acceptance.**

* 1. Performance Requirement

It is critical to State’s interest that Final Acceptance of the Solution occurs on or before the date agreed to in the Statement of Work.

Contractor's capability to meet this date will be determined by Agency following the conclusion of the Stabilization Period, in accordance with Section 3.6 of this Contract. If Agency determines that the Solution is not ready for Final Acceptance on the specified date, then assessments will be made until such time as Agency determines that either i) Final Acceptance may occur, or ii) that Contractor is in default.

* 1. Damages

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

* + 1. The cost of extending other Contractors performing project-related work for State;
    2. The cost of extending the Agency project team as required to assess the Solution for Final Acceptance after the initial Final Acceptance assessment.

1. **Federal Certification.**
   1. Performance Requirement

Contractor warrants that the Solution will meet all [federal agency] Certification Requirements by the date agreed to in the current Accepted Project Implementation Plan and Project Schedule, and will thereafter meet all [federal agency] Certification Requirements for the duration of the Contract.

* 1. Damages.

If the Solution delivered by Contractor is not certified by the date agreed to in the current Accepted Project Implementation Plan and Project Schedule, then Contractor will be liable for all additional project costs incurred by Agency beyond the specified certified date that would not have otherwise been incurred, and for any federal financial penalties or reductions in funding resulting from the failure of the Solution to be certified by the specified date.

If the Solution or any component is decertified prior to termination of this Contract, then Contractor will be liable for resulting damages (including consequential and incidental), fines, and penalties incurred by State, and all additional project costs incurred by Agency to bring the Solution into compliance that would not have otherwise been incurred.

1. **System Availability.**

* 1. Performance Requirement

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

* 1. Liquidated Damages

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

5.2.1 \_\_\_\_\_ dollars ($\_\_\_) in week one.

5.2.2 \_\_\_\_\_ dollars ($\_\_\_) in week two.

5.2.3 \_\_\_\_\_ dollars ($\_\_\_) per week thereafter.

1. **System Response Time.**
   1. Performance Requirement

Upon completion of the Implementation Task, the Solution must meet the system response time requirements defined in the Task \_\_Technical Services Requirements.

* 1. Liquidated Damages

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

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

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

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

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

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

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

1. **Key Persons.**

* 1. Performance Requirement- See Contract Section 4.1.
  2. Liquidated Damages

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

1. **Security Requirements Compliance.**
   1. Performance Requirement

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

* 1. Liquidated Damages

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

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

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

1. **Defect Service Level** **Agreement.**

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

* 1. Defect Level Resolution Times
  2. Defect Resolution Process
  3. Defect Resolution Time Period Measurement
  4. Quality Measures
  5. Reporting and Assessment of Liquidated Damages

**EXHIBIT C**

**INSURANCE**

**EXHIBIT D**

**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

**The individual signing on behalf of Contractor certifies it meets the following standards**:

1. Contractor is registered under ORS chapter 701 or other applicable Oregon statute to provide labor or services for which such registration is required.

2. Contractor has filed federal and state income tax returns in the name of Contractor or a business Schedule C as part of an authorized individual’s 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. Contractor will furnish the tools or equipment necessary for the contracted labor or services.

4. Contractor has the authority to hire and fire employees who perform the labor or services.

5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. (**Please check four or more of the following**):

\_\_\_\_ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.

\_\_\_\_ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.

\_\_\_\_ C. Telephone listing used for the business is separate from the personal residence listing.

\_\_\_\_ D. Labor or services are performed only pursuant to written contracts.

\_\_\_\_ E. Labor or services are performed for two or more different persons within a period of one year.

\_\_\_\_ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature Date

**EXHIBIT E**

**CONTRACTOR’S PERSONNEL**

Subject to Section 4.1, Key Persons, Contractor may update this Exhibit D via written notice to Agency.

Authorized Representative:

Name and Title:

Phone:

Email:

Mailing Address:

Project Manager:

Name and Title:

Phone:

Email:

Mailing Address:

Other Key Persons:

Name and Title:

Phone:

Email:

Mailing Address:

**EXHIBIT F**

**AGENCY PERSONNEL**

Agency may update this Exhibit E via written notice to Contractor.

Authorized Representative:

Name and Title:

Phone:

Email:

Mailing Address:

Project Manager:

Name and Title:

Phone:

Email:

Mailing Address:

**EXHIBIT G**

**LICENSE FOR** **CONTRACTOR** **INTELLECTUAL PROPERTY**

# EXHIBIT H

# LICENSE FOR THIRD PARTY INTELLECTUAL PROPERTY

# EXHIBIT I

# FEDERAL TERMS AND CONDITIONS

# 

# EXHIBIT J

**PRIVACY AND SECURITY REQUIREMENTS**

Contractor’s obligations under this Contract include the requirements of this exhibit.

1. **PURPOSE.** The terms and conditions of this Privacy and Security Requirements exhibit address:
   1. Contractor’s Use of Agency Data;
   2. Contractor’s access to State systems and networks;
   3. Contractor’s Services and delivery of the Solution; and
   4. The periodic exchange of Agency Data between Agency’s and Contractor’s systems via electronic means.
2. **COMPLIANCE REQUIREMENTS.**
   1. **Compliance with Laws, Regulations, and Policies.** Contractor and its employees, contractors, and agents shall comply with all applicable state and federal laws and regulations, and State of Oregon policies governing use and disclosure of data and access to State of Oregon networks and information systems, including as those laws, regulations, and policies may be updated from time to time. Applicable laws, regulations, and policies include but are not limited to:
      1. The Oregon Consumer Information Protection Act, ORS 646A.600 through 646A.628 (OCIPA). Contractor will have access to documents, records or items that contain “Personal Information,” as that term is used in ORS 646A.602(12), and which is subject to the protections of OCIPA. For purposes of OCIPA, Contractor is a [covered entity/vendor].
      2. Oregon’s Statewide Information Security Standards, found online at: [https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspxf](https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspx), including security controls that meet or exceed “Moderate” security controls in the National Institute of Standards and Technology [(NIST) Special Publication (SP) 800-53](http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf).
      3. Oregon’s Statewide Information Security Plan, found online at: <https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspx>.
      4. Oregon’s Statewide IT Policies: <https://www.oregon.gov/das/Pages/policies.aspx#IT>.
3. **NOTIFICATIONS.**
   1. **Incidents and Breaches.** In the event Contractor or its subcontractor or agents discover or are notified of a suspected or confirmed security incident, or a suspected or confirmed breach of security or privacy, Contractor shall notify Agency’s point of contact (or delegate) immediately, and in no event more than 24 hours following discovery or notification. An incident is an observable, measurable occurrence that is a deviation from expected operations or activities. Breaches include a failure to comply with Contractor’s confidentiality obligations. If the State determines that an incident or breach requires notification of Agency clients, or other notification required by law, the State will have sole control over the notification content, timing, and method, subject to Contractor’s obligations under applicable law.
   2. **Requests for Agency Data.** In the event Contractor receives a third-party request for Agency Data, including any electronic discovery, litigation hold, or discovery searches, Contractor shall first give Agency notice and provide such information as may be reasonably necessary to enable Agency to protect its interests.
4. **PRIVACY OBLIGATIONS.** In addition to Contractor’s obligations under the terms and conditions of the Contract:
   1. **Generally.** Contractor shall hold all Agency Data, and other information as to personal facts and circumstances obtained by Contractor on Agency clients, as confidential, using the highest standard of care applicable to the data, and shall not divulge any Agency Data without the written consent of [applicable authority] except as required by other terms of this Privacy and Security Requirements exhibit or applicable law.
   2. **Limited Purposes.** Contractor shall limit the use or disclosure of Agency Data to persons directly connected with the administration of this Contract. Confidentiality policies apply to all requests from outside sources.
   3. **Privacy Protections.** Agency Data may include information, such as client records, subject to specified confidentiality protections under state or federal law. Contractor shall comply with laws, regulations, and policies applicable to the information, including as specified in this Contract.
   4. **Training.** Contractor’s employees, subcontractors, and agents who will access Agency Data have received training on the privacy and security obligations relating to Agency Data, including client records. Contractor shall provide periodic privacy and security training to its employees, subcontractors, and agents.
   5. **Responsible for Compliance.** Contractor is responsible for the compliance of its employees, agents, and subcontractors with this Contract, including this Exhibit J, and with any third-party licenses to which access is subject.
   6. **Privacy and Security Measures.** Contractor represents and warrants it has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security and privacy of Agency Data, including client records, State networks, and information assets, regardless of the media. Contractor shall monitor, periodically assess, and update its security controls and risk to ensure continued effectiveness of those controls.
   7. **Security Risk Management Plan.** Contractor shall ensure the level of security and privacy protection required in accordance with this Contract is documented in a security risk management plan. Contractor shall make its security risk management plan available to the State for review upon request.
   8. **Audit Rights and Access.** Contractor shall maintain records in such a manner as to clearly document its compliance with and performance under this Privacy and Security Requirements exhibit, and provide Agency, the Oregon Secretary of State, the federal government, and their duly authorized representatives access to Contractor’s officers, agents, contractors, subcontractors, employees, facilities, and records to:
      1. Determine Contractor’s compliance with this Privacy and Security Requirements exhibit,
      2. Validate Contractor’s written security risk management plan, or
      3. Gather or verify any additional information Agency may require to meet any state or federal laws, rules, or orders.
      4. Access to facilities, systems, and records under this section will be granted following reasonable notice to Contractor. Records include paper or electronic form, system security logs, and related system components and tools (including hardware and software), required to perform examinations and audits, and to make excerpts and transcripts, including for data forensics.
5. **ACCESS TO STATE SYSTEMS.**
   1. **Agency Review of Access Requests.** If required for access to State networks and systems, Agencywill review requests and will:
      1. Notify Contractor of the approval or denial of its request for each user for whom access has been requested;
      2. Provide any unique log-on identifier required for authorized access;
      3. Provide updates to approved inquiry processes and instructions to Contractor.
   2. **Contractor’s Responsibilities for User Accounts**. Contractor shall facilitate completion of any forms for each person for whom access to state networks and systems is requested.
      1. Contractor is responsible for all activities that occur through its access, including for any acts related to a lost or stolen user ID or password.
      2. Contractor is responsible for ensuring information provided by its users is accurate, complete, and up to date.
      3. Contractor shall immediately notify Agency when a user, group of users, or Contractor, no longer requires access, whether due to changes in duties or due to changes in Contractor’s programs related to this Contract.
   3. **Security and Disposal.** Contractor shall maintain security of equipment, and ensure the proper handling, storage and disposal of all information assets accessed, obtained, or reproduced by Contractor and its users to prevent inadvertent destruction or loss. Contractor shall ensure proper disposal of equipment and information assets when authorized use ends, consistent with Contractor’s record retention obligations and obligations regarding information assets under this Contract.
   4. **Prevention of Unauthorized Access.** Contractor shall prevent any access to State of Oregon networks and information systems by its users that is not authorized in accordance with this Contract and applicable law, and shall implement and maintain safeguards to prevent unauthorized access.
   5. **No Overseas Access.** Contractor shall not allow access [to Agency Data or the Production Environment] from locations outside of the United States or its territories, nor allow use of any information asset in any country or in any manner prohibited by governing applicable law, rule, or policy.
   6. **Authorized Access and Use Only.** No user may access or use Agency Data for any purpose other than those specifically authorized through this Contract.
      1. Users shall not use access to obtain or attempt to obtain any Agency Data or information assets not authorized or intentionally made available.
      2. The use and disclosure of any information asset is strictly limited to the minimum information necessary to the exchange of Agency Data between the parties.
      3. Except as otherwise specified or approved by Agency, neither Contractor nor its users may modify, alter, delete, or destroy any information asset.
   7. **Revocation or Termination of Access.** Breach, or wrongful use or disclosure of Agency Data or other Confidential Information by Contractor or its users, may cause the immediate revocation of the access granted though this Contract, in the sole discretion of Agency, or Agency may specify a reasonable opportunity for Contractor to cure the unauthorized use or disclosure and end the violation, and terminate the access if Contractor does not do so within the time specified by Agency. Legal actions also may be taken for violations of applicable regulations and laws.
   8. **No Unauthorized Distribution.** Contractor shall not sell, make available, or provide Agency Data or other Confidential Information in any form to any other persons or organizations, and shall not use Agency Data or other Confidential Information for any purposes other than as allowed under this Contract and applicable law.
   9. **No Impairment.** Contractor shall not use this access in any manner which could damage, disable, overburden, or impair State of Oregon networks or information systems, or interfere with any other entity’s use or benefit of the network and information systems.
   10. **Prohibition on Data Mining**. Contractor shall not capture, maintain, scan, index, share or use Agency Data stored or transmitted by virtue of the Services or Solution, or otherwise use any data-mining technology, for any non-authorized activity. For purposes of this requirement, “non-authorized activity” means the data mining or processing of data, stored, or transmitted through the Solution or State systems, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Contract.
   11. **Incidents and Breaches.** Contractor shall comply, and shall cause its subcontractors to comply, with any requirements for identifying and addressing a security incident or breach. This requirement applies regardless of whether the incident or breach was accidental or otherwise.
6. **SUSPENSION OR TERMINATION.**
   1. Agency may immediately revoke the access granted Contractor for Contractor’s failure to comply with the requirements of this Privacy and Security Requirements exhibit. In such event, Agency will provide subsequent written notice to Contractor’s point of contact. Agency may, to the extent it determines it is reasonable and able to do so, provide advance notice to Contractor to cure any deficiency or breach of this Privacy and Security Requirements exhibit.
   2. Either party may terminate access under this Privacy and Security Requirements exhibit, and Agency may modify access, upon written notice if there are changes to or revised interpretations of federal or state laws, rules, or regulations, or if either party has changes in policies that require such action.
7. **RETURN OF AGENCY DATA.** Upon expiration or termination of the Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency’s information assets, including Agency Data, that are in the possession or under the control of Contractor in whatever stage and in a format acceptable to Agency.
   1. Except as necessary to meet obligations under Contract Section 22, Records Maintenance and Access, Contractor shall not retain any copies of Agency Data or other electronic Confidential Information. Contractor shall notify Agency of any conditions that make returning all such Agency property not feasible. Upon Agency’s written acknowledgement that returning all Agency Data and electronic Confidential Information is not feasible, Contractor shall purge or destroy retained Agency Data and electronic Confidential Information in all its forms in accordance with the most current version of NIST SP 800-88 (or other agreed-upon standard) and provide Agency with written certification of sanitization.
   2. Contractor shall maintain protections required by law or the Contract for any retained Agency Data and electronic Confidential Information for so long as Contractor (including through any subcontractor) retains it.
8. **COSTS.** Each party will bear its own costs related to the acquisition of all equipment, software, data lines or connections necessary for access to State of Oregon networks and information systems, unless otherwise agreed to by written agreement between the parties. Each party is responsible for securing compatible hardware, equipment, and software, and network connections. Each party is responsible for complying with the licenses for third party products, including software and services that allow access.
9. **INTERPRETATION.** Any ambiguity in this Privacy and Security Requirements Exhibit will be resolved to permit Agency to comply with applicable privacy and security laws and State of Oregon and Agency policies interpreting those laws.
10. **SUBCONTRACTORS.** Contractor shall ensure all subcontractors providing services related to this Privacy and Security Exhibit comply with its terms.

# EXHIBIT K

# PAYMENT SCHEDULE

# EXHIBIT L

**SOLUTION REQUIREMENTS**