



Oregon

Tina Kotek, Governor

Oregon Transportation Commission
Office of the Director, MS 11
355 Capitol St NE
Salem, OR 97301-3871

DATE: April 27, 2023
TO: Oregon Transportation Commission

FROM: Kristopher W. Strickler
Director

SUBJECT: Consent Item 10 – OIPP Price Agreement for CV Ecosystem Project

Requested Action:

Approve OIPP Price Agreement with CV Ecosystem partner *NextMoves by Cintra*.

Background:

The Commission enrolled the Connected Vehicle Ecosystem project into the Oregon Innovative Partnership Program (OIPP) in July 2019, recognizing that to fulfill its mission of providing a safe and reliable multimodal transportation system, the Oregon Department of Transportation (ODOT) will need to adopt new and evolving technologies that improve how it operates and funds projects. This project is listed in the agency's Strategic Action Plan as one of the "transformative technologies" that the agency will use to develop a modern transportation system and ensure sufficient and reliable funding. Enrollment in OIPP allows ODOT to undertake an innovative public-private partnership procurement for the project.

Connected vehicles (CV) can communicate with each other and with infrastructure, allowing them to transmit vast quantities of data about the transportation system and vehicle operations. The CV Ecosystem will provide a platform for CV data gathering and distribution, creating a link to communicate information to and from vehicles on the highway system. The CV Ecosystem needs to be capable of handling the massive volume of messages generated by connected vehicles within a scalable model.

The system will benefit roadway funding at scale, such as RUC and tolling systems, by collecting and providing the data necessary for the program's business partners engaged in transaction processing and account management. Additionally, access to this real-time data will allow ODOT to enhance and optimize operations of the transportation system, to include reducing crashes, improving travel time, and lowering emissions.

CV technology and RUC programs are both emerging solutions to address disparate challenges. The intersection of these will enable the next generation of funding for transportation infrastructure and services. A CV Ecosystem will be developed to improve ODOT's ability to enhance safety and mobility of the transportation system by enhancing its intelligent transportation system (ITS) functionality; while RUC is designed to address transportation funding deficits by aligning taxation with roadway usage, just

as traditional fuel taxes had done before vehicle efficiency increased. Conducting a demonstration that combines these two solutions will validate compatibility, identify potential risks, enhance interoperability, and help build a more scalable system.

ODOT's Office of Innovative Funding (OIF) received a \$10 million grant from the Surface Transportation System Funding Alternatives ("STSFA") Program to conduct the initial planning, design, and implementation of a CV Ecosystem with a focus on RUC. The grant requires the project demonstrate the RUC application using the CV Ecosystem. Beyond these grant requirements it will also support ITS safety and mobility applications in future phases.

In January 2022, OIF conducted a competitive solicitation for a partner or consortium of partners under the OIPP program. Eleven proposers or proposer groups submitted applications and after three rounds of evaluation, NextMoves by Cintra was selected as the partner who can bring the highest level of innovation, collaboration with OEMs and value to the project. ODOT entered negotiations for a Price Agreement in fall of 2022; the resulting agreement is complete and has been reviewed by the Department of Justice for legal sufficiency per OAR 731-070-0230.

Outcomes:

With the Commission's approval of the Price Agreement, ODOT will move to contract execution, and begin Phase 0 of the project: the planning and design of a CVE consisting of two main components, (1) RUC, a mileage-based revenue collection system using native in-vehicle telematics data gathered through a CVE and (2) Safety and ITS connected vehicle applications.

Without approval the CV Ecosystem project will come to a standstill. The requirements of the STSFA grant will not be met and the grant funding will have to be returned to FHWA.

Attachments:

- Attachment 01 – 35039 CVE Price Agreement

Execution Version

State of Oregon – Department of Transportation

Price Agreement for Services

PRICE AGREEMENT #: B39610 (ORBuys # PO 73000-000XXX)

PROJECT NAME: Connected Vehicle Ecosystem (“CVE”) Services

Price Agreement includes federal funds: Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	No DBE Goal Assigned
Certified Small Business Aspirational Target (for State-only funded and will exceed \$100,000, including as amended; see Exhibit H)	N/A
Expenditure Account (EA) #: C4371742/101_	Agency Key # : N/A

This Price Agreement for Services (this “Price Agreement”) is by and between the State of Oregon, acting through its **Oregon Department of Transportation** (“Agency” or “ODOT”) and Cintra Digital Business Ventures LLC, commercially known as NextMove by Cintra “NextMove”, a Delaware based Limited Liability Corporation doing business as NextMove (“Contractor”) and is effective as of the Effective Date.

Agency’s Contract Administrator for this Price Agreement: Name: Jim Atkins Address: 355 Capitol St. NE Salem, Or. 97301-3871 Phone: (503) 302-7827 Fax: Email: Jim.Atkins@odot.oregon.gov	Contractor’s Contract Administrator for this Price Agreement: Name: Brand Wright Address: 9600 Great Hills Trail #250E Austin, Tx. 78759 Phone: (512) 983-6995 Fax: (512) 637-1498 Email: bwright@nextmovebycintra.com
Agency’s Project Manager (if different than Contract Administrator) Name: Phone: Email:	Alternate Contact for Contractor Name: Phone: Email:

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Price Agreement.

1. Effective Date; Expiration and Work Order (“Work Order Contract” or “WOC” or “Contract”) Assignment Period; Termination.

1.1. Effective Date. This Price Agreement shall become effective on the date this Price Agreement has been signed by the Parties and all required State of Oregon approvals have been obtained.

1.2. Expiration and WOC Assignment Period

i. Expiration. This Price Agreement shall have a limited WOC assignment period but this Price Agreement will not expire until the later of the following occurs: (1) the expiration of the WOC assignment period, or (2) the expiration or termination of all WOCs assigned under this Price Agreement.

ii. WOC Assignment Period. Unless this Price Agreement is sooner terminated, the initial WOC assignment period ends 6 years from the Effective Date of this Price Agreement. Depending on Consultant performance, need and available funding, PAs may be amended to extend the WOC assignment period for up to an additional 4 years beyond the initial WOC assignment period.

A WOC is considered assigned (for purposes of meeting the WOC Assignment Period limitation) when the WOC selection process is completed and the selection documentation has been submitted to the ODOT Procurement Office. All WOC assignments are tentative until negotiations are successfully completed, all required signatures have been obtained on the WOC, and Agency has issued a notice to proceed (“NTP”) to Consultant.

2. Price Agreement Documents. This Price Agreement consists of the following documents, which are listed in descending order of precedence:

- 2.1.** this Price Agreement less all exhibits;
- 2.2.** Exhibit D, (Federal Terms and Conditions);
- 2.3.** Exhibit C (Special Terms and Conditions);
- 2.4.** Exhibit I (Security and Privacy Exhibit);
- 2.5.** Exhibit A (Scope of Services);
- 2.6.** Exhibit B (Required Insurance);
- 2.7.** Exhibit E (Independent Contractor Certification)
- 2.8.** Exhibit F (Compensation Provisions);
- 2.9.** Exhibit G (Title VI, Non-Discrimination Provisions); and
- 2.10.** Exhibit H (Work Order Contract Assignment and Requirements).

The foregoing documents and Exhibits are attached hereto and made a part of the Price Agreement by

this reference.

3. Services.

3.1. Performance of Services. Contractor shall perform the services (the “Services”) and deliver to Agency the deliverables (“Deliverables”) as described in any WOCs executed under this Price Agreement. The Services and Deliverables included in a WOC must be within the Scope of Services set forth in **Exhibit A**, attached and incorporated into this Price Agreement by this reference. Contractor agrees to perform the Services and provide to Agency the Deliverables required under each WOC in accordance with the terms and conditions for WOCs as set forth in this Price Agreement.

3.2. Submission and Acceptance of Deliverables. When the Statement of Work requires Contractor to deliver Deliverables to Agency, then Contractor shall deliver Deliverables that comply with the requirements and acceptance criteria set forth in the Statement of Work. Contractor shall provide written notice to Agency upon delivery of a completed Deliverables to Agency. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables has the characteristics and otherwise meets the acceptance criteria set forth in the Statement of Work. If Agency determines that the Deliverables has the characteristics and meets acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency’s acceptance of the Deliverables.

3.3. Rejection of Deliverables; Corrections. If Agency determines that a Deliverables does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency’s rejection of the Deliverables and describe in reasonable detail in such notice the Agency’s basis for rejection of the Deliverables. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 business day period (or longer period if agreed to by parties in writing), modify or improve the Deliverables at Contractor’s sole expense so that the Deliverables has the characteristics described in the Statement of Work and meets, in all material respects, the acceptance criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables within 15 business days of receipt of the Contractor's delivery of the Deliverables. Failure of the Deliverables to have the characteristics or meet in all material respects the acceptance criteria set forth in the Statement of Work after the second submission will constitute a default by Contractor. In the event of such default, Agency may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Price Agreement.

4. Compensation.

4.1. Not to Exceed Compensation. There is no guarantee that any specific amount of work or overall dollar amounts will be assigned via WOCs under this Price Agreement. The maximum,

not-to-exceed compensation payable to Contractor for all WOCs issued under this Price Agreement, which includes any allowable expenses, is \$15,000,000. The payment methodology, basis for payment, invoice requirements and other provisions related to Contractor compensation are set forth in Exhibit F, Compensation.

4.2. Payments. Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A.

4.3. Invoices. Contractor shall submit invoices to Agency as set forth in the Statement of Work or, if not set forth therein, to Agency's Contract Administrator. Contractor may submit invoices in accordance with the payment schedule set forth in the Statement of Work or, if no payment schedule is set forth therein, then no more frequently than once per month for accepted Deliverables and Services. The invoices must describe all Services performed with particularity, including the dates Contractor performed the Services for which it is requesting payment, and by whom the Services were performed and shall itemize and explain all expenses that this Price Agreement requires Agency to pay and for which Contractor claims reimbursement. Each invoice must also include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation.

4.4. 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 or elsewhere in this Price Agreement. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at:

<https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>

4.5. Funds Available and Authorized. Contractor will not be compensated for Services performed under this Price Agreement by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Price Agreement within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under this Price Agreement 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 Price Agreement.

5. Contractor's Personnel.

5.1. Key Persons. Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Price Agreement, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person may delegate performance of the powers and responsibilities that a Key Person is required to provide under this Price Agreement to another Contractor employee, subcontractor or agent without first obtaining the written consent of Agency. Further, Contractor may not re-assign or transfer a Key Person to other

duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is 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 a Key Person, or if Contractor must replace a Key Person, Agency may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. If Agency does not respond to any proposed replacement of a Key Person in writing within 30 days after the proposed replacement personnel is proposed by the Contractor, such non-response shall be deemed an approval by the Agency. Any replacement personnel approved by Agency in writing (email acceptable) will thereafter be deemed a Key Person for purposes of this Price Agreement, and the Statement of Work will be deemed amended to include such Key Person.

5.2. Payment for Replacement Key Personnel. If Agency is paying Contractor on an hourly or other periodic basis, then Contractor will 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.

5.3. State Premises. Contractor and Contractor staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

6. Independent Contractor; Responsibility For Taxes And Withholding.

6.1. Independent Contractor. Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, Agency may not 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.

6.2. No Conflicts. Contractor, by signature to this Price Agreement, represents and warrants that Contractor's performance of the Services under this Price Agreement creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor from performing the Services under this Price Agreement.

6.3. Affiliation. Contractor understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

6.4. Taxes and Benefits. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Price Agreement and, unless required by applicable law, Agency will not withhold from such compensation or 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 Price Agreement, except as a self-employed individual. Throughout the duration of the Price Agreement, Contractor shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to Agency whenever Contractor's backup withholding status or any other information on the form changes.

7. Subcontracts, Successors, And Assignments.

- 7.1. Subcontracts.** Contractor shall not enter into any subcontracts for any of the Services required by this Price Agreement without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Price Agreement provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor. Agency's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Price Agreement.
- 7.2. Successors and Assigns.** The provisions of this Price Agreement are binding upon and inure to the benefit of the parties to this Price Agreement, their respective successors, and permitted assigns, if any.
- 7.3. No Assignment.** Contractor shall not assign or transfer any of its rights or delegate its obligations under this Price Agreement without Agency's prior written consent.

8. Representations and Warranties.

8.1. Contractor's General Representations and Warranties. Contractor represents and warrants to Agency that:

- 8.1.1. Contractor has the power and authority to enter into and perform this Price Agreement and any Work Order Contracts entered into under the Price Agreement;
- 8.1.2. The Work Order Contract, when executed and delivered under the Price Agreement, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
- 8.1.3. Contractor shall, at all times during the term of this Price Agreement, be qualified, professionally competent, and duly licensed to perform the Services;
- 8.1.4. Contractor prepared its proposal related to this Price Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
- 8.1.5. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:

8.1.5.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS

chapters 316, 317, and 318;

8.1.5.2. 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;

8.1.5.3. 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

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8.1.6. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

8.2. Contractor's Performance Warranties.

8.2.1. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the standards prevalent in Contractor's industry, trade or profession;

8.2.2. The Services and each Deliverables delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards or requirements set forth in this Price Agreement;

8.2.3. Except as otherwise provided in this Price Agreement (including Section 9), 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; and

8.2.4. Except as otherwise set forth in this Price Agreement or any WOC, any subcontractors performing work for Contractor under this Price Agreement 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 Price Agreement.

8.2.5. Notwithstanding anything to the contrary in this Price Agreement, Contractor disclaims all warranties related to Agency's use of the Services or Deliverables outside of the Project.

8.3. Warranties cumulative. The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Price Agreement.

9. Intellectual Property.

9.1. Definitions. The following terms have the meanings set forth below:

“Agency Intellectual Property” means any Intellectual Property that is owned by Agency, including Agency Data (as defined in Exhibit A).

“Contractor Intellectual Property” means any Intellectual Property owned by Contractor, including Intellectual Property developed in connection with the Services or Deliverables, including Contractor Software and Usage Data (as defined in Exhibit A).

"Contractor Software" means any and all computer code and formulas, including all versions, updates, revisions, improvements, and modifications thereof, whether in source code, object code, or byte code format, including systems software, application software, firmware, middleware, programming tools, scripts, routines, interfaces, libraries, and databases, and all related specifications and documentation, including developer notes, comments and annotations, user manuals, and training materials relating to any of the foregoing, that is developed by or on behalf of Contractor prior to the Effective Date or in connection with the Services or Deliverables.

“Intellectual Property” means any and all proprietary, industrial and intellectual property rights, under the law of any jurisdiction or rights under international treaties, both statutory and common law rights, including: (i) utility models, supplementary protection certificates, patents and applications for same, and extensions, divisions, continuations, continuations-in-part, reexaminations, and reissues thereof; (ii) trademarks, service marks, trade names, slogans, domain names, logos, trade dress and other identifiers of source, and registrations and applications for registrations thereof (including all goodwill associated with the foregoing); (iii) copyrights, moral rights, database rights, other rights in works of authorship and registrations and applications for registration of the foregoing; and (iv) trade secrets, know-how, and rights in confidential information, including designs, formulations, concepts, ideas, compilations of information, methods, techniques, procedures, and processes, whether or not patentable.

“Third Party Intellectual Property” means any Intellectual Property owned by parties other than Agency or Contractor.

“Work Product” means any documents, reports or other Deliverables that are created by Contractor or Contractor’s subcontractors or agents (either alone or jointly with others) and delivered to Agency in connection with the Services pursuant to this Price Agreement. For clarity, “Work Product” does not include any Contractor Intellectual Property or Third Party Intellectual Property incorporated into any Work Product. .

9.2. License to Work Product and Contractor Intellectual Property. Subject to the rights granted under this Price Agreement, as between the parties, Contractor owns all ownership rights, title, and interest to and in all Work Product and Contractor Intellectual Property (including Contractor Software).

- 9.2.1. Contractor grants to Agency a non-exclusive, irrevocable, royalty-free, universal license to use, copy, display, distribute, transmit and prepare derivative works of Work Product for any Agency purpose and to authorize others to do the same on Agency's behalf. The foregoing license includes a right for Agency and its authorized users to use, copy, display, distribute, and transmit any Contractor Intellectual Property to the extent incorporated into Work Product by Contractor. For clarity, Agency shall not use such Contractor Intellectual Property apart from Work Product or apart from derivative works of Work Product except as set forth under a separate license in this Price Agreement or other written agreement between the parties.
- 9.2.2. Except with respect to Contractor Software and Work Product, Contractor grants to Agency a non-exclusive, irrevocable, non-sublicensable (except as is provided in this Section 9.2.2), royalty-free, universal, license to use, copy, display, distribute, and transmit Contractor Intellectual Property included in the Services and Deliverables solely for the purpose of Agency's use pursuant to this Price Agreement or applicable WOCs. Subject to the terms of any applicable WOCs, Agency may permit third parties or related entities to use such Contractor Intellectual Property solely on Agency's behalf and solely to the extent necessary for such third party or related entity to develop, operate or maintain the Project, provided that neither Agency nor such third party or related any has any right to create derivative works of such Contractor Intellectual Property.
- 9.2.3. To the extent that Contractor provides any Contractor Software to Agency pursuant to any applicable WOC, Contractor agrees to license such Contractor Software to Agency on commercially reasonable terms.

9.3. License to Third Party Intellectual Property. To the extent that any Services, Deliverables or Work Product delivered by Contractor under this Price Agreement are or are a derivative work based on Third Party Intellectual Property, or are a compilation that incorporates Third Party Intellectual Property, Contractor shall secure on Agency's behalf a license to such Third Party Intellectual Property sufficient to fulfill the business objectives identified in this Price Agreement.

9.4. License to Agency Intellectual Property. Subject to the rights granted under this Price Agreement, as between the parties, Agency owns all ownership rights, title, and interest to and in Agency Intellectual Property provided to Contractor pursuant to this Agreement. To the extent Agency provides Contractor with any Agency Intellectual Property under this Price Agreement or applicable WOC(s), Agency grants to Contractor a non-exclusive, royalty-free, universal license to use, copy, display, distribute, transmit and prepare derivative works of such Agency Intellectual Property for the purpose of providing and improving (i) the Services and Deliverables and (ii) similar products and services offered by Contractor to its other customers.

9.5. Data Rights. Notwithstanding anything to the contrary in this Price Agreement, Contractor's rights to process Agency Data and Usage Data are limited to the extent (i) required by applicable law and (ii) set forth in writing by Agency to Contractor.

9.6. Restrictions. This section does not apply to Work Product. Except as expressly set forth in this Price Agreement or applicable WOC, Agency shall not, and shall not cause or knowingly

permit any third party, to: (i) disassemble, decompile, decrypt, extract, reverse engineer, modify or prepare a derivative work based upon, the Services or Deliverables, or otherwise apply any procedure or process to the Services or Deliverables, in each case for the purpose of ascertaining, deriving, and/or appropriating for any reason or purpose, the source code, source listings or any other Contractor Intellectual Property or Third Party Intellectual Property related to the Services or Deliverables; (ii) sell, resell, license, sublicense, distribute, make available, rent or lease any Services or Deliverables, or include any Service or Deliverables in a service bureau or outsourcing offering; or (iii) use the Services or Deliverables to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.

9.7. No Rights. Except as expressly set forth in this Price Agreement, nothing in this Price Agreement may be construed as granting to or conferring upon either party any right, title, or interest in any Intellectual Property that is now owned or subsequently owned by the other party. Subject to the rights granted under this Price Agreement or applicable WOC(s), Contractor reserves all rights, title and interest in and to the Services and Deliverables, including applicable Contractor Intellectual Property.

9.8. Marks. Neither party grants to the other party any right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent of the other party. Each party grants to the other party only the licenses and rights specified in this Price Agreement. Neither party may remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from the other party whether in connection with this Price Agreement, applicable WOC(s) or otherwise, without written consent from the other party.

9.9. Competing Services. Subject to the provisions of this Section 9, and Contractor's obligations with respect to Confidential Information under Section 10, nothing in this Price Agreement precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Price Agreement, 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 other individuals or entities, 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 delivered to Agency pursuant to this Price Agreement. Subject to the terms of this Price Agreement, each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may independently develop during the course of performance under this Price Agreement, free of any use restriction or payment obligation to the other party.

10. Confidential Information.

10.1. Confidential Information. Contractor acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, "Contractor Staff") may, in the course of performing the Services under this Price Agreement, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form

(including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Contractor or any Contractor Staff may come into contact with or that is obtained by Contractor or Contractor Staff in the performance of this Price Agreement shall be considered for the purposes of this Price Agreement the confidential information of Agency (“Confidential Information”). Contractor shall and shall cause Contractor Staff to 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 include information that (i) is or becomes (other than by disclosure by Contractor or Contractor Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Price Agreement; (iii) is rightfully in Contractor’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Price Agreement; (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 Contractor or Contractor Staff who can be shown to have had no access to the Confidential Information.

10.2. Non-Disclosure. Contractor shall hold, and shall cause Contractor Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, 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 Contractor Staff of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Price Agreement, 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 Price Agreement or any WOC, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Price Agreement. Upon expiration or termination of this Price Agreement 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 Price Agreement, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

10.3. 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.

- 10.4. Injunctive Relief.** Contractor acknowledges that breach of this Section 10, 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.
- 10.5. Publicity.** Contractor agrees that it will not disclose the form, content or existence of this Price Agreement or any Deliverables in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Contractor's Services, without the prior written consent of Agency.
- 10.6. 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 and Usage Data, including as required in the Privacy and Security Exhibit attached as Exhibit I, as they are stated elsewhere in this Contract, and as such laws, regulations, and policies are updated or otherwise made available to Contractor.

11. Indemnity by Contractor.

- 11.1. Claims.** 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, costs (including attorneys' fees) and expenses (collectively, "Claims") of any nature resulting from, arising out of, or relating to the intentional, reckless or negligent activities of Contractor or its officers, employees, subcontractors, or agents under this Price Agreement, or such actions materially in violation of this Price Agreement including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services set forth in this Price Agreement or the WOC.
- 11.2. IP Indemnity.** In addition to and without limiting the generality of Section 11.1, Contractor expressly agrees to indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any third party claims that the Services or Deliverables (including any Contractor Software) , or Agency's use thereof in accordance with this Price Agreement, infringes or violates any Third Party Intellectual Property . If Contractor believes at any time that the Services or Deliverables (including Contractor Software) infringe upon any Third Party Intellectual Property, Contractor may upon receipt of Agency's prior written consent, which Agency will not unreasonably withhold : (i) replace or modify the applicable infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced

item; (ii) modify the infringing item to be non-infringing, provided that, following any such replacement or modification made pursuant to the foregoing, the Deliverable(s) and Services continue to function in material conformance with the specifications and meet the Acceptance Criteria set forth in the applicable WOC(s); or (iii) obtain for Agency the right to continue using the infringing item in accordance with this Price Agreement or applicable WOC(s). Contractor's failure or inability to accomplish the foregoing, then such failure or inability will be deemed a material breach of this Price Agreement, and Agency may pursue any other rights and remedies available to it under this Price Agreement, including termination. Contractor will not have any obligations under this Section 11.2 for any claims to the extent based on or arising out of the following:

11.2.1. Agency's modification of the Services or Deliverables (including Contractor Software other than as contemplated by this Price Agreement or applicable WOC, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing;

11.2.2. Use of the Services or Deliverables (including Contractor Software in a manner other than as contemplated in this Price Agreement or applicable WOC, its specifications, or as otherwise authorized by Contractor in writing; or

11.2.3. Use of the Services or Deliverables (including Contractor Software) in combination, operation, or use of with other materials or products other than as contemplated by this Price Agreement or applicable WOC, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing.

11.3. Legal Counsel. If Contractor is required to defend the State of Oregon or Agency or their officers, employees or agents under Section 11.1 or 11.2, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

11.4. Damages to State Property and Employees. Contractor is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents 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 Price

Agreement.

11.5. CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

11.6. Data and Network Services. Except to the extent that a claim or loss results from the negligent, reckless or intentional acts or omissions of Agency, Contractor shall assume liability for all claims or losses related to Agency Data or Usage Data loss or breach of security caused directly or indirectly by or resulting from the Deliverables or Services provided by Contractor.

12. Limitation of Liabilities.

12.1. FOR THE SERVICES TO BE PROVIDED PURSUANT TO ANY WOC, EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 10, (ii) SECTION 11.1, (iii) SECTION 11.2, (iv) SECTION 11.6; 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, CONTRACTOR'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO ONE AND ONE HALF TIMES THE AMOUNT TO BE PAID BY THE AGENCY TO THE CONTRACTOR UNDER SUCH WOC; PROVIDED, HOWEVER, THAT, IF ANY WOC INCLUDES RECURRING PAYMENTS, THEN THE CONTRACTOR'S LIMIT OF LIABILITY HEREUNDER SHALL INSTEAD BE ONE AND A HALF TIMES THE ANNUAL RECURRING PAYMENTS BY THE AGENCY TO THE CONTRACTOR UNDER THE APPLICABLE WOC.

12.2. EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, (ii) SECTION 11.1, (iii) SECTION 11.2, (iv) SECTION 11.6; 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.

13. Insurance. Contractor shall maintain insurance as set forth in Exhibit B.

14. Default; Remedies; Termination; Attorney's Fees.

14.1. Default by Contractor. Contractor will be in default under this Price Agreement if:

14.1.1. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

14.1.2. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Price Agreement and Contractor has not obtained such license or certificate (or begun the process of pursuing and diligently

continuing to pursue such license or certificate) within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or

14.1.3. Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Price Agreement, fails to perform the Services under this Price Agreement within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Price Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice; or

14.1.4. Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

14.2. Agency's Remedies for Contractor's Default. In the event Contractor is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Price Agreement and at law or in equity, including, but not limited to:

14.2.1. Termination of this Price Agreement under Section 14.6.2; or

14.2.2. Withholding all monies due for Services and Deliverables that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or

14.2.3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or

14.2.4. Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty; or

14.2.5. Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

14.3. Remedies Cumulative. The remedies set forth in Section 14.2 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 a court determines that Contractor was not in default under Sections 14.1, then Contractor will be entitled to the same remedies as if this Price Agreement was terminated pursuant to Section 14.6.1.

14.4. Default by Agency. Agency will be in default under this Price Agreement if:

14.4.1. Agency fails to pay Contractor any amount pursuant to the terms of this Price Agreement, and Agency fails to cure such failure within 30 calendar days after

Contractor's notice or such longer period as Contractor may specify in such notice; or

14.4.2. Agency commits any material breach or default of any covenant, warranty, or obligation under this Price Agreement, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

14.5. Contractor's Remedies. In the event Agency terminates this Price Agreement or any WOC entered into under the Price Agreement: (i) under Section 14.6.1; or (ii) in the event Agency is in default of a material provision of the Price Agreement or any WOC entered into under the Price Agreement; in either case, Contractor's sole monetary remedy will be (x) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Price Agreement or any WOC entered into under the Price Agreement but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (y) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid with respect to such Deliverables and any claim(s) that Agency has against Contractor.. In no event will Agency be liable to Contractor for any expenses related to termination of this Price Agreement or any WOC entered into under the Price Agreement or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.5, Contractor shall pay immediately any excess to Agency upon written demand.

14.6. Termination.

14.6.1. Agency's Right to Terminate at its Discretion. Agency may terminate this Price Agreement or any WOC entered into under the Price Agreement:

14.6.1.1. Upon 30 calendar days' prior written notice by Agency to Contractor;

14.6.1.2. Immediately upon written notice by Agency to Contractor if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Work Products; or

14.6.1.3. Immediately upon written notice by Agency to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Services or Work Products under this Price Agreement is prohibited or Agency is prohibited from paying for such Services or Work Products from the planned funding source.

14.6.2. Agency's Right to Terminate for Cause. In addition to any other rights and remedies Agency may have under this Price Agreement, Agency may terminate this Price Agreement or any WOC entered into under the Price Agreement immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, if Contractor is in default under Section 14.1. In the event that Agency terminates this Price Agreement or any WOC entered into under the Price

Agreement pursuant to this section 14.6.2 and a court of competent jurisdiction later determines that Contractor was not in default, Agency's termination of the Price Agreement or WOC shall be deemed to be pursuant to section 14.6.1 - Agency's Right to Terminate at its Discretion.

14.6.3. Contractor's Right to Terminate for Cause. Contractor may terminate this Price Agreement or any WOC entered into under the Price Agreement immediately upon written notice to Agency, or at such later date as Contractor may establish in such notice, if Agency is in default under Section 14.4.

14.6.4. Return of Property. Upon termination of this Price Agreement for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property that was provided to Contractor and any Work Product that is listed as a Deliverable on a WOC for which Agency has made payment in whole or in part but has not delivered to the Agency; so long as such property or Work Product is in the possession of or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. .

14.6.5. Effect of Termination. Upon receiving a notice of termination of this Price Agreement, Contractor shall immediately cease all activities under this Price Agreement, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Services and the Deliverables.

14.7. Attorney's Fees. With the exception of defense costs and expenses pursuant to Section 11, neither party shall be entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to the Price Agreement or any WOC entered into under the Price Agreement.

15. Compliance with Law.

15.1. Compliance with Law Generally. Contractor shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Price Agreement and the performance of the Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Price Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act portion of the American Recovery and Reinvestment Act of 2009 ("ARRA"), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (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) Section 188 of the Workforce Investment Act ("WIA") of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) 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 Price Agreement and required by law to be so incorporated. Agency's performance under the Price Agreement is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Price Agreement, 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 products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

15.2. Compliance with Oregon Tax Laws.

15.2.1. Contractor shall, throughout the duration of this Price Agreement, 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 the tax laws described in Section 8.1.5.1 through 8.1.5.4.

15.2.2. Any violation of Section 15.2.1 constitutes a material breach of this Price Agreement. Further, any violation of Contractor's warranty in Section 8.1.5 of this Price Agreement that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Price Agreement. Any violation entitles Agency to terminate this Price Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Price Agreement, and to pursue any or all of the remedies available under this Price Agreement, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Price Agreement, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Contractor without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Contractor's breach of this Price Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

15.2.3. These 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.

15.3. Compliance with Federal Law. Contractor shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit D, which is attached and incorporated into this Price Agreement by this reference.

15.4. Pay Equity. As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on 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 constitutes a material element of this Price Agreement and a failure to comply constitutes a breach that entitles Agency to terminate this Price Agreement and any assigned WOC for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

16. Governing Law; Venue and Jurisdiction.

16.1. Governing Law. This Price Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

16.2. Venue and Jurisdiction. Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Price Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS PRICE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section 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, from any claim, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

17. Miscellaneous Provisions.

17.1. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Price Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Price Agreement ("Records") in such a manner as to clearly

document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government (including, but not limited to the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States) and their duly authorized representatives will have access to such financial records and other Records that are pertinent to this Price Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records and other Records for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Price Agreement, whichever date is later.

- 17.2. 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 Price Agreement. Contractor shall demonstrate its legal capacity to perform the Services under this Price Agreement in the State of Oregon prior to entering into this Price Agreement.
- 17.3. Force Majeure.** Neither Agency nor Contractor may be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Price Agreement.
- 17.4. Survival.** All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Price Agreement, including without limitation this Section 17.4, and provisions regarding Price Agreement definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
- 17.5. Time is of the Essence.** Contractor agrees that time is of the essence under this Price Agreement.
- 17.6. Notice.** Except as otherwise expressly provided in this Price Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address or telephone number set forth in this Price Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five

business days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.

- 17.7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Price Agreement and are the only parties entitled to enforce the terms of this Price Agreement. Nothing in this Price Agreement gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, 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 Price Agreement.
- 17.8. Severability.** The parties agree that if any term or provision of this Price Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 the Price Agreement did not contain the particular term or provision held to be invalid.
- 17.9. Merger Clause; Waiver.** This Price Agreement and attached exhibits, together with the WOC, 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 Price Agreement. No waiver, consent, modification or change of terms of this Price Agreement will bind the parties unless in writing and signed by both parties and all necessary State 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. The failure of Agency to enforce any provision of this Price Agreement in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.
- 17.10. Amendments.** Agency may amend this Price Agreement or any WOC entered into under the Price Agreement to the extent permitted by applicable statutes and administrative rules. No amendment to this Price Agreement or any WOC is effective unless it is in writing signed by the parties and has been approved as required by applicable law.
- 17.10.1. Changes via Electronic Amendment.** The following amendments to this Price Agreement or any WOC entered into under the Price Agreement, when such amendments do not include changes to scope of work or not-to-exceed amount of the Price Agreement or WOC, may be accomplished by electronic amendment (sent via e-mail) that documents agreement by Contractor and Agency:
- The addition of or change in Contractor's subcontractors approved by Agency;

- The addition of or changes to billing rate schedules for Contractor and its subcontractors;
- Revisions to delivery schedule and Price Agreement or WOC expiration date.
- Revisions to designated Contract Administrator.

17.11. Counterparts. This Price Agreement or any WOC may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Price Agreement or any WOC so executed constitutes an original.

17.12. 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 Price Agreement or any WOC, including the procurement process relating to this Price Agreement or any WOC, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Price Agreement or any WOC, 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 Price Agreement or any WOC. 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 Price Agreement or any other provision of law.

17.13. Certifications. The individual signing on behalf of Contractor (the undersigned) hereby:

- 17.13.1. Certifies and swears under penalty of perjury to the best of the undersigned's knowledge that: (a) 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; (b) the undersigned is authorized to act on behalf of Contractor, the undersigned has authority and knowledge regarding Contractor's payment of taxes, and to the best of the undersigned's knowledge, Contractor is not in violation of any Oregon tax laws and that for a period of no fewer than 6 calendar years preceding the Effective Date of this Price Agreement, Contractor faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (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; (c) Contractor is an

independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate.

- 17.13.2. Certifies that, to the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts.
- 17.13.3. Certifies that the information provided on the attached Exhibit E, Independent Contractor Certification, is true and correct as of the Effective Date.
- 17.13.4. Certifies that Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.
- 17.13.5. Certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.112, of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the Price Agreement, to maintain the policy and practice in force during the entire Price Agreement term (see [additional information and sample policy template](#)).
- 17.13.6. Certifies that Contractor has read this Price Agreement, understands it, and agrees to be bound by its terms and conditions.
- 17.13.7. Certifies that: (a) Contractor understands and has provided to all Associates the ODOT COI Guidelines, and Contractor and to the best of its information, knowledge and belief, its Associates are in compliance with the **ODOT Conflict of Interest Guidelines** (as may be revised from time to time) available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>, and (b) if submittal of a Conflict of Interest Disclosure Form is required, the information Contractor provided through the Conflict of Interest Disclosure Form is true, accurate and complete as of the Price Agreement Effective Date. In addition, Contractor shall submit to Agency a true, accurate and complete Conflict of Interest Disclosure Form, in the form required by Agency, no later than 10 business days following the date Contractor becomes aware of any staffing, organizational or other material changes that result in nonconformance with disclosure requirements of the ODOT Conflict of Interest Guidelines.
- 17.13.8. Certifies that in the event that Contractor is a general partnership or joint venture,

Contractor signature(s) on this Price Agreement constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Price Agreement.

- 17.13.9. Certifies that: **(a)** No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b)** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Price Agreement, the undersigned shall complete and submit [Standard Form-LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
- (c)** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (d)** Contractor shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.

SIGNATURES

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Work Order Contract is fully executed, and Notice-To-Proceed has been issued by Agency.

Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Price Agreement, Work Orders, and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. Agency reserves the right at any time to require the submission of the hard copy originals of any documents.

CONTRACTOR

By: _____ Title: _____ Date: _____

By: _____ Title: _____ Date: _____

DOJ REVIEW: Reviewed by Assistant Attorney General Jack McDonald via email dated 04/20/2023.

Oregon Transportation Commission (“OTC”) Review: Approved via email dated _____

AGENCY (Procurement Authority)

Signature

Print Name

Date

AGENCY (Expenditure Decision Authority)

Signature

Print Name

Date

Accessibility and Accommodation Requests: The Oregon Department of Transportation is committed to complying with all statutory requirements to ensure that it is providing information that is more accessible to people with disabilities, as required by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and 36 C.F.R. 1194 Appendix A. To request reasonable accommodation for access, due to a disability, to information related to this document, please contact the Oregon Department of Transportation’s Procurement Office at 3930 Fairview Industrial Drive SE Salem, OR 97302-1166, phone #503-986-2710 or OPOAdmin@odot.oregon.gov.

Exhibit A

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

The purpose of this project is for the State of Oregon Department of Transportation (“ODOT”) to work with the Contractor for the ideation, planning, development, demonstration, implementation, operation and maintenance of a CVE that will support RUC and ITS safety and mobility applications (“the Project”).

The Agency recently received a grant from the Surface Transportation System Funding Alternatives (“STSA”) Program to conduct the initial planning, design, and implementation of a CVE with a focus on RUC. To meet the grant requirements, this Project must attempt to demonstrate the RUC application using the CVE. Beyond these grant requirements the CVE will also eventually need to support ITS safety and mobility applications further described herein.

The Agency is undertaking this Project to enhance its existing RUC program, OReGO, by testing and potentially implementing a Connected Vehicle Ecosystem (“CVE”) to improve the functionality of OReGO. As envisioned, the CVE will allow the Agency to deploy a RUC program at scale and reduce the administrative costs by eliminating the need for telematics devices that go into the On-Board Diagnostic II (“OBD-II”) ports of vehicles. On board telematics would be used to provide data to the RUC Business Partners required for RUC operations. The Agency will be continuing to work with its certified account managers, who will need to access data from the CVE.

The CVE will also provide a platform for Connected Vehicle (“CV”) data gathering and distribution, creating a link to communicate information to and from vehicles on the highway system. The CVE needs to be capable of handling the massive volume of messages generated by connected vehicles within a scalable model.

The system will benefit roadway funding at scale, such as RUC and tolling systems, by collecting and providing the data necessary for the programs for use by business partners engaged in transaction processing and account management. The system will also benefit roadway users and the Infrastructure Owner Operators (“IOOs”) by providing two-way data gathering and sharing for safety and mobility applications. Additional details of the envisioned CVE are provided in the Project Overview section.

General Expectations

Contractor commits to:

- Manage and facilitate all facets of the project that are reasonably within Contractor’s control to ensure the project is completed on or ahead of time and within budget;
- Apprise Agency throughout the project of any issues or decisions that may impact the project budget or schedule;
- Use recycled/recyclable products to the maximum extent economically feasible in the performance of this Price Agreement; and
- Embody sound and cost-effective sustainability principles in the Services performed under the Price Agreement consistent with the provisions of the Oregon Sustainability Act (2001 HB 3948) that are included in ORS 184.421-.423.

Project Phases

The WOC's for this Price Agreement will be divided into phases:

- **Phase 0** - consists of the ideation, planning and design of a CVE consisting of two main components (1) RUC, mileage-based revenue collection system using native in-vehicle telematics data gathered through a CVE and (2) Safety and ITS connected vehicle applications. The CVE platform is intended to be an ongoing platform owned, operated, and maintained by the Contractor. A Partnership Agreement will be developed during Phase 0 that will provide an overarching framework for the working relationship, how to proceed with subsequent phases, and how to bring other entities into the CVE, between ODOT and the CVE vendor.
- **Early Future Phases** - include building enough of the CVE platform to conduct a demonstration of the RUC application. If the demonstration proves viable, Agency will authorize Contractor to move into system development, testing and deployment activities.
- **Subsequent Future Phases** - will be conditional on the planning effort and subject to the availability of funding and successful completion of the initial project phases, include further development of the RUC application, demonstrations of ITS and connected vehicle use cases, further deployment of the CVE platform, and additional development of the platform as Agency's technology solutions continue to evolve.

Acronyms and Definitions

Agency: The Oregon Department of Transportation (also sometimes referred to herein as "ODOT").

Agency Data: any data or information created and stored by Agency or Contractor on behalf of Agency through the Services performed under this Price Agreement; provided that Agency Data does not include Usage Data. Agency Data is Confidential Information.

API: Application Program Interface

APM: Agency Project Manager

ATMS: Advanced Transpiration Management System

CAMs: Commercial Account Managers

CM: Configuration Management

ConOps: Concept of Operations

CV: Connected Vehicle

CVE: Connected Vehicle Ecosystem

CV2X: Connected Vehicle to Infrastructure Communication

DSRC: Dedicated Short Range Communications

FHWA: Federal Highway Administration

IOO: Infrastructure Owner Operators

ITS: Intelligent Transportation System

JSON: An open standard file format and date interchange format that uses human readable text to store and transmit data

MAP: Map Management

NIST: National Institute Standards and Technology

NTP: Notice to Proceed

OBD-II: On-Board Diagnostic II, second generation of on-board self-diagnostic equipment

ODOT: Oregon Department of Transportation

OEM: Original Equipment Manufactures

OIPP: Oregon Innovative Partnership Program

OReGO: Oregon's Road Usage Charge Program

OTC: Oregon Transportation Commission

PM: Consultants Project Manager

QA: Quality Assurance

QC: Quality Control

RITIS: Regional Integrated Transportation Information System

RUC: Road Usage Charging

RSU's: Roadside Units

SPaT: Signal Phase and Timing

STSFA: Surface Transportation System Funding Alternatives

TOC: Transportation Operations Center

Usage Data: any data or information created, collected, or otherwise processed by or on behalf of Contractor regarding Agency and its clients in connection with their use of the Services or Deliverables.

VIN: Vehicle Identification Number

V2I: Vehicle 2 Infrastructure

WOC: Work Order Contract

WZDx: Work zone Date Exchange

XML: Extensible Markup Language is a set of codes, or tags that describes the text in a digital document

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

- **Development or Maintenance of Websites or Web Content** - Contractor shall perform all web-related Services required under this Price Agreement in conformance with the **ODOT Web Standards** (available at: <https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx>), which is incorporated into this Price Agreement with the same force and effect as though fully set forth herein. ODOT shall have ownership and control of Work Products developed by Contractor as set forth in the Ownership of Work Product terms and conditions of the Price Agreement.
- **ODOT Communications Standards**
For any Consultant tasks that require communications functions on behalf of Agency, Consultant shall comply with the ODOT Communications Standards (available at: <https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx>) which is incorporated into this Price Agreement with the same force and effect as though fully set forth herein.

2. Software Requirements

Contractor Software shall produce Deliverables that are fully compatible, readable and useable by Agency software, requiring no modification or translation of Contractor's Deliverables.

3. General Requirements

- Agency's Project Manager ("APM"), or such other individual identified in specific tasks or as designated in writing to Contractor, is the primary contact on behalf of Agency for this project.

- To the extent possible, all transmittals from Contractor to Agency must include the PA #, WOC #, and project name.
- Contractor shall represent project and Agency in an appropriate and professional manner in public.

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

- Contractor shall coordinate with Agency staff as necessary and shall revise draft Deliverables to incorporate Agency draft review comments.
- Contractor shall incorporate comments within 10 business days from receipt by Agency and return the revised Deliverables to Agency staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

D. FORMAT REQUIREMENTS

- Contractor shall submit draft and final Deliverables in electronic format via email (and hard copy if requested).
- Contractor shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by Agency.
- Each draft and final text-based or spreadsheet-based Deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by Agency.
- Additional format requirements may be listed with specific tasks/Deliverables throughout the SOW or in the Price Agreement.

E. SCOPE of SERVICES

CV technology and RUC programs are both emerging solutions to address disparate challenges. The intersection of these will enable the next generation of funding for transportation infrastructure and services. A CVE will be developed to improve the Agency's ability to enhance safety and mobility of the transportation system by enhancing its ITS functionality; while RUC is designed to address transportation funding deficits by aligning taxation with roadway usage, just as traditional fuel taxes had done before vehicle efficiency increased. Conducting a demonstration that combines these two solutions will validate compatibility, identify potential risks, enhance interoperability, and help build a more scalable system.

The envisioned CVE from this Project will enable the exchange of data from vehicles, the infrastructure and Agency transportation applications providing data necessary for RUC and ITS safety and mobility applications. The CVE will enable information sharing to and from vehicles on the highway system and could include two-way gathering and sharing data from the following sources:

- Internet CV's using the cellular network
- Oregon account managers' Road Usage Charge Mileage Collection Subsystem and RUC Processing Subsystems
- Vehicles equipped with Vehicle to Infrastructure ("V2I") radios using Dedicated Short-Range Communications ("DSRC") and Connected Vehicle to Infrastructure Communication ("C-V2X"). Note: support for V2I radios is envisioned as a later phase and demonstration of the CVE using the cellular network is preferred initially.
- Oregon DOT central software systems (e.g., central signal system, active traffic

management system, TripCheck Data API, etc.)

Combining data from CVs, infrastructure, and other data sources will create an ecosystem that enables a connected highway future. The Agency and its business partners will be able to gather data necessary for the RUC program for use in transaction processing and account management. The Agency will also be able to gather data and insights on the transportation system to improve planning, management, and operations, and significantly reduce crashes, improve travel times, and lower transportation related greenhouse gas emissions. People will enjoy a more reliable and safe transportation experience. Freight providers will experience more predictability and cost savings.

The CVE platform, illustrated in Figure 1, will support multimodal data sharing using open data standards that will enable RUC and CV safety and mobility applications shared over the Internet and via roadside units with connected cars. This approach leverages the cellular network, Internet connectivity, and V2I radios for a comprehensive connected vehicle aggregation and delivery system. Agency will build upon its partnership with the University of Maryland to utilize the Regional Integrated Transportation Information System (“RITIS”) system as the data visualization and analysis tool for the data processed through the CVE.

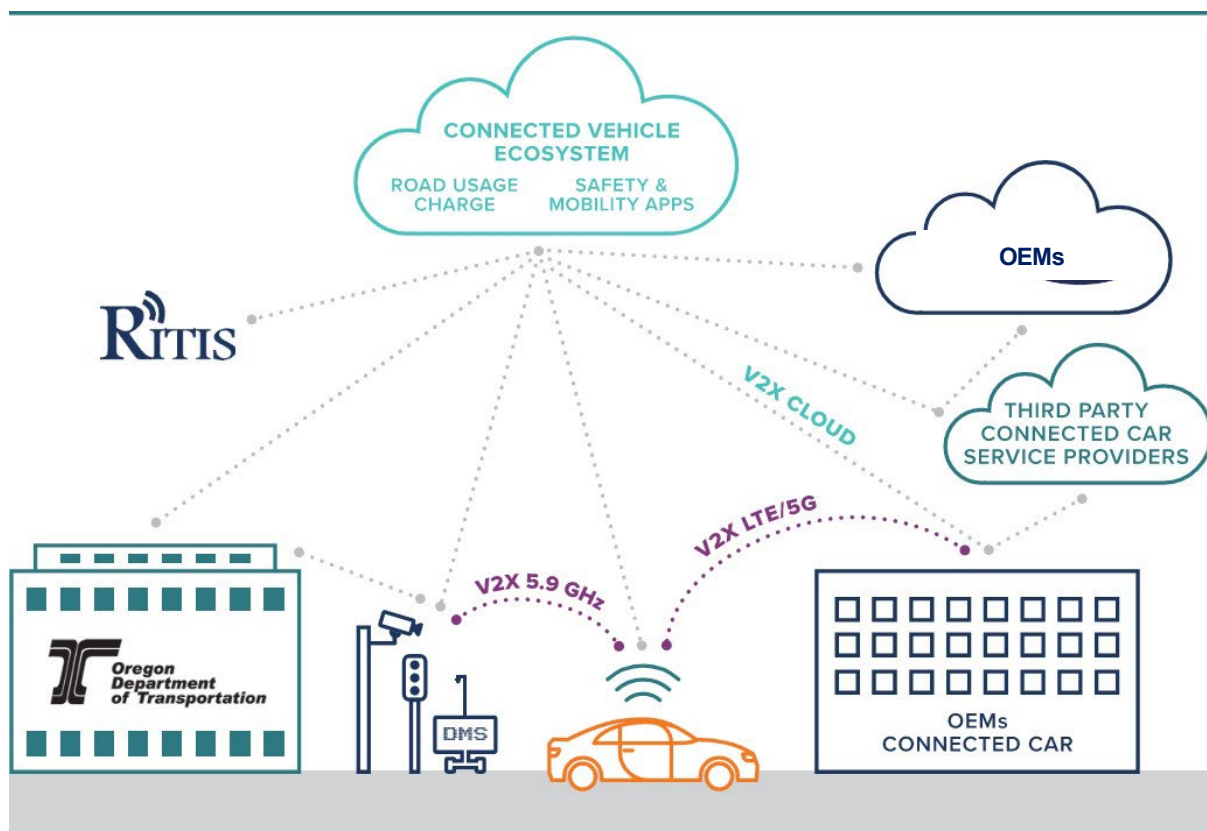


Figure 1: Connected Vehicle Ecosystem

IMPORTANT FEATURES OF THE OREGON CONNECTED VEHICLE ECOSYSTEM

Collect and share CV data to support revenue collection through RUC

OReGO is still evolving, and that is expected to continue for the foreseeable future (7 – 10 years), with

current efforts towards making it a mandatory program. The RUC program is founded on having an open system with outsourced account management services. These services include data collection from vehicles enrolled in the program, transaction processing of that data, including pricing trips and applying fuel tax credits, and account management. Account management consists of enrolling vehicles, collecting money, remitting tax reports and payments to the state, and order fulfillment. The account managers will need to have access to the data from the CVE in order to perform those functions for enrolled vehicles.

The CVE project will demonstrate the capability to enable data sharing that must occur between the Oregon account managers' Road Usage Charge Mileage Collection Subsystem and Transaction Processing Subsystem. The CVE will be part of the Mileage Collection Subsystem as shown in Figure 2. The project and resultant deliverables will address both technological and administrative considerations and may be used to inform further system development and potential policy.

The Contractor will demonstrate, through the ecosystem, the feasibility of revenue collection using CV data. The Contractor will develop a system to meet the RUC requirements and allow account managers to ingest the data to support revenue collection. The type of data collection and transaction processing system must be data agnostic enabling the CVE to capture and analyze data from any connected vehicle. This has potential benefits for all states. The CVE could also be leveraged for other programs, such as value pricing, congestion pricing, and tolling.

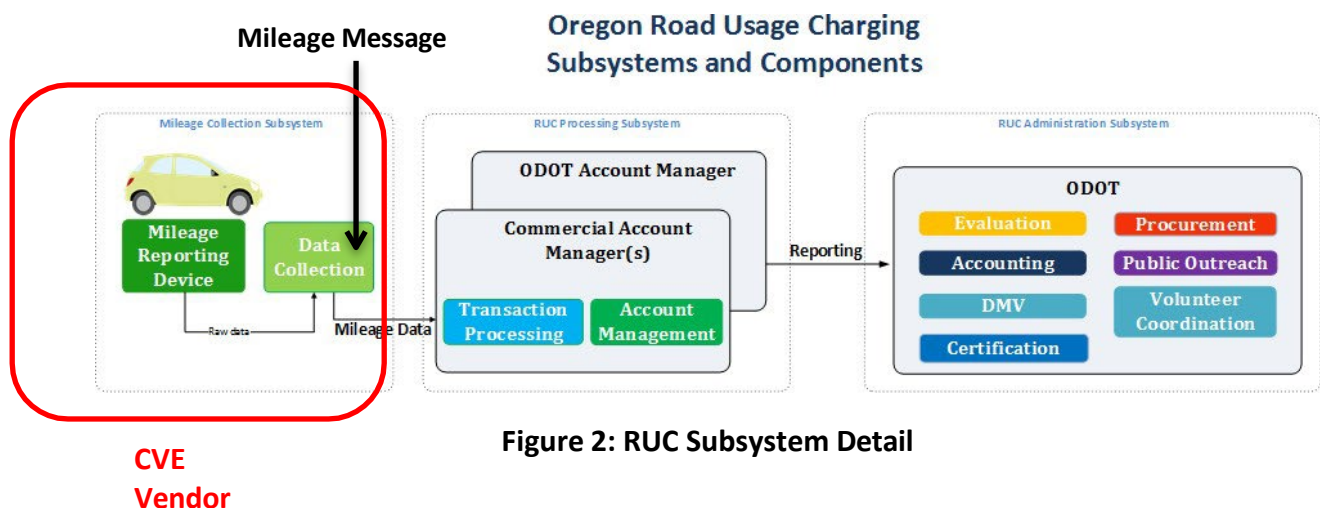


Figure 2: RUC Subsystem Detail

Support Roadside and Network-Based Communications

The envisioned CVE will support two-way communications using network-based communications over the cellular network and Internet, and V2I radios on the 5.9GHz frequency band. Figure 3 explains how the roadside and network-based communications work. The CVE should be designed in a way to allow additional technologies over time.

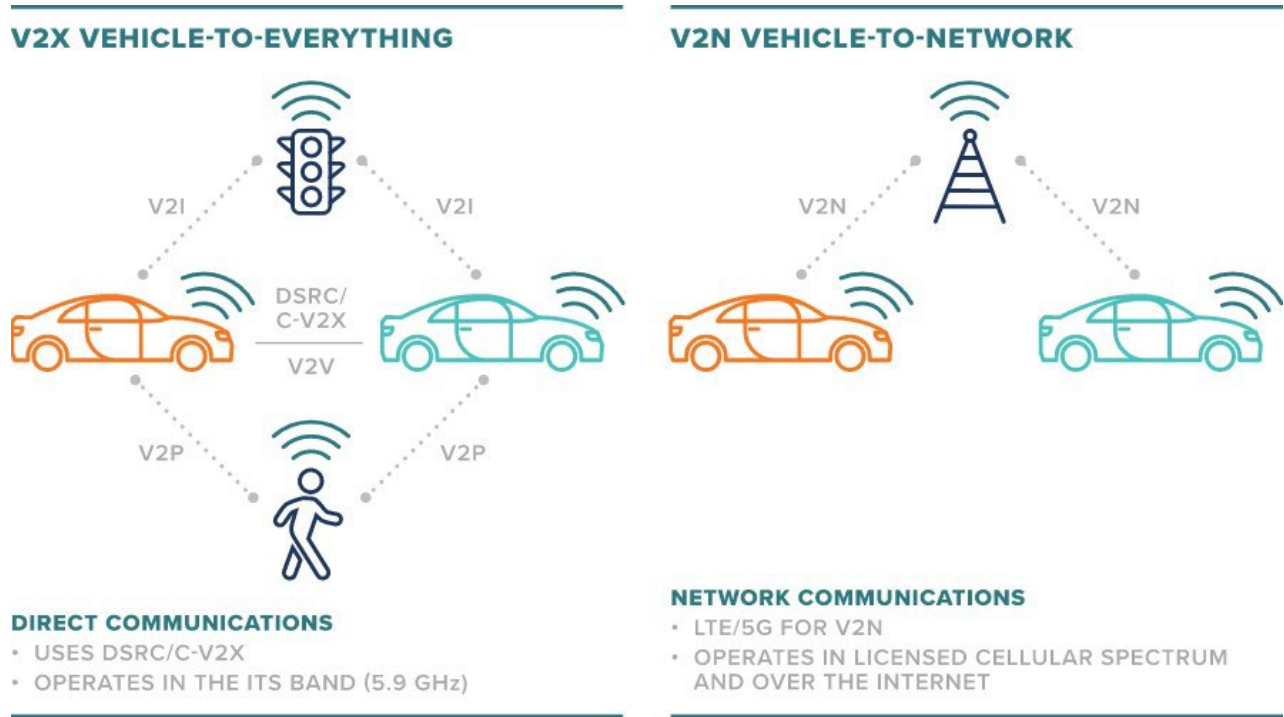


Figure 3: Roadside and Network-Based Connected Vehicle Ecosystem Communications

Data From Many Sources

The Oregon CVE will integrate data from both public and private sources; secure and anonymized sensitive data; and make anonymized data available to the Agency and third-party users through real-time and historic Application Programming Interfaces (APIs) (included in Phase 0 planning effort). The ecosystem and management platform will also use visual analytic tools, and other methods to support applications development, research, planning, and operations.

Figure 4 illustrates the systems architecture.

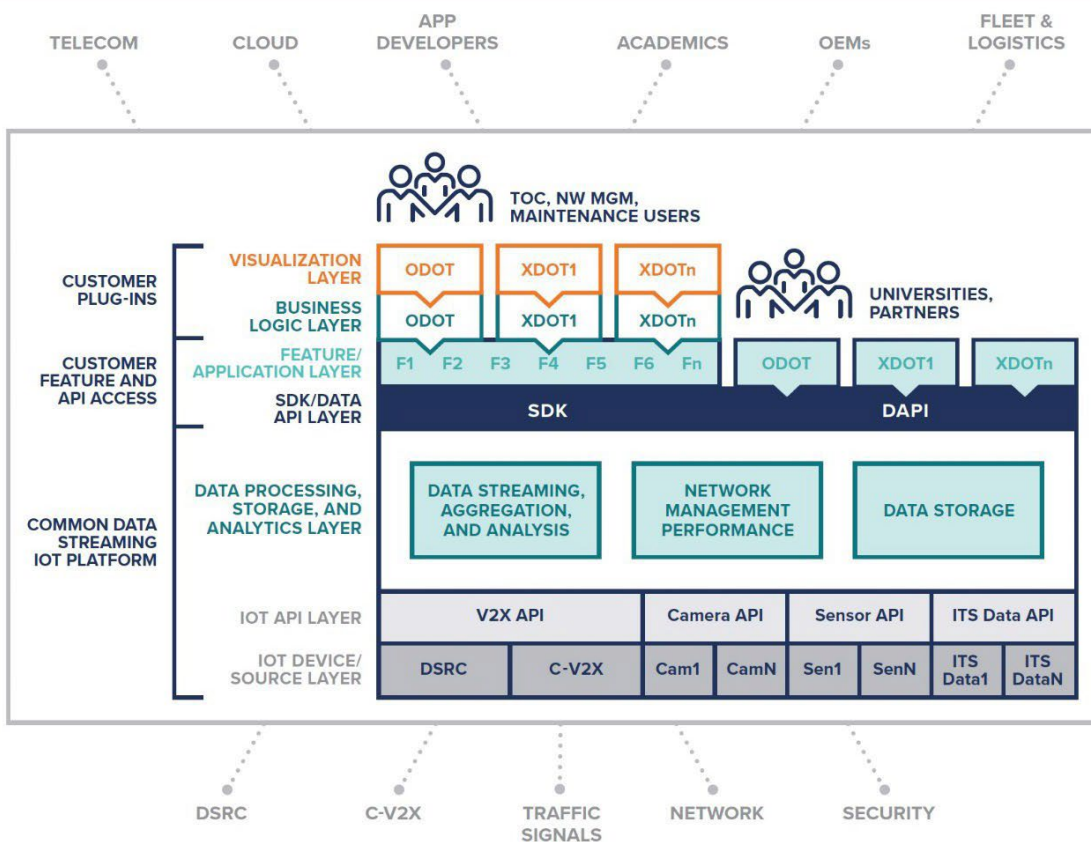


Figure 4: System Architecture for the Connected Vehicle Ecosystem

INNOVATIONS

The proposed CVE should deliver several innovations that benefit CV deployments in Oregon and nationally.

Direct from the Source: Other CV and RUC systems in the country rely on third-party devices that must be installed by users in their vehicles. The Oregon CVE shall source data directly from Original Equipment Manufacturers (“OEMs”), to increase the quality, timeliness, and quantity of the data, all while better protecting privacy and enabling faster implementation. This data will, in turn, be accessible by Agency-certified business partners to provide RUC services initially. It may also be accessible by other business partners that are designated by the Agency.

Leverages the Network: Other states are acquiring similar data through the deployment of Roadside Units (“RSUs”) in work zones, at traffic signals, and in other locations. The RSU approach is valuable but the cost and maintenance for wide-scale deployment is a challenge. The Oregon CVE should leverage data from vehicles collected over the Internet, cellular network, or RSUs. The envisioned system should support RSUs but only for use in spot locations where safety applications require low latency.

Multi-OEM Collaboration: The envisioned system should support many OEM partners. The Oregon approach will facilitate the coordinated sharing of data from multiple OEMs to produce a collaborative data marketplace that supports all road users.

Scalable: The Oregon CVE should enable a scalable data stream direct from OEMs while relying on only minimal additional roadside infrastructure. This architecture also relies heavily on the existing cellular networks.

SAFETY AND MOBILITY APPLICATIONS

ODOT expects to work with the Contractor to determine the safety and mobility applications that may be implemented in future phases after the RUC demonstration. The following ITS Use Cases are priority applications from the perspective of the Oregon Department of Transportation and other regional partners.

- **Freeway Active Traffic Management:** Shares real-time variable speed limits, queue warning, road weather conditions, travel times, and collects vehicle dynamics and weather condition information from vehicle sensors to provide more coverage and reliable messaging.
- **Traffic Incidents and Closures:** Share real-time information about road closures, traffic incidents, hazardous debris, fire activity, amber alerts, public safety messages, and public service announcements.
- **Rural Freeway Weather Incident:** Shares road condition, road status, and incident information in rural, mountainous areas with minimal existing roadside infrastructure. Also, informs operations and incident response personnel of incident location and conditions from vehicle dynamics, and from vehicle sensors.
- **Work Zone Data Exchange (“WZDx”):** Uses the active work zone data feed to share work zone information and speed limit reduction with connected vehicles and informs operators and construction managers with Internet-connected car data insights.
- **Traffic Signal Timing and Operations:** Shares real-time signal phase status and time to red or green using over-the-network and RSUs. Agency uses Signal Phase and Timing (“SPaT”) and Map Management (“MAP”) applications provided by the Q-Free MaxConnect API through the TripCheck Data API to share traffic signal lane geometry and current phase information.
- **Curve Speed Warning:** Shares hazardous curve warnings based on vehicle speed and road conditions.

During the program development, Agency will work with the selected Contractor and OEM partners to select, prioritize, and refine safety and mobility applications to align with mutual interests.

1.1 Desired CVE Attributes

As a part of the Scope of Work for this Project, the Contractor will be developing the CVE solution in coordination with ODOT’s Office of Innovative Funding and System Operations and ITS Office. This section describes the desired high-level attributes and minimum functionalities for the CVE that will continue to be identified and defined during the system design. In concept, the CVE consists of an open-architecture data gathering, data analytics, data storage, and data exchange system. A cloud based solution is desired, and

Agency desires the solution to align with the State of Oregon’s Cloud Forward Framework:

https://www.oregon.gov/das/OSCIO/Documents/EIS_CloudForward.pdf

The desired attributes and functionalities described in this section should not limit the Contractor’s proposed solution or exclude relevant or essential features which the Contractor deems necessary. Any applicable industry standards should be considered in the Contractor’s solution. The Contractor can and is encouraged to make recommendations on other applicable system attributes and functionalities.

The CVE should be designed to allow for the addition of new CVE elements, applications and other operational enhancements that may be needed in the future. This includes provisioning for updates to technology, ODOT software, security, and other future technology updates.

Any software needed to operate the CVE and all associated solutions, applications and modules should be inclusive of the Contractor’s solution. The CVE should be developed and deployed without reliance upon the procurement of specialized hardware.

System Description and Desired Features

Ideally, the CVE should be a cloud-based management system that will include a hosting layer, data catalog, and data lake event hubs to stream data into the cloud-based data lake. The CVE should, at a minimum, be used to store data as it is collected to permit analysis to be conducted by either the CVE vendor or authorized third parties. This data will likely be collected by a variety of sources and uploaded to the CVE in either real-time or as a batch. The CVE should store this data, provide it to those performing the analysis, and may serve as the storage site for the processed data.

The CVE should have provisions for allowing system enhancements to address emerging technologies, such as communications with roadside units (CV2X) and 5G devices. The CVE should provide a unified data exchange for connection of various systems of various technologies. If any third-party interfaces are required, the CVE should include all necessary licensing to allow full operation of the system.

The CVE’s operation shall allow all offices within Agency to access and operate in any location in Oregon. Other agencies may be added for usage during the development or deployment stages of the CVE. The CVE should allow for remote secure access for system support and operational control. The CVE should be able to receive firmware updates that support changes or improvements to the baseline system, through the included maintenance service period.

CVE updates should be version-controlled with unique release/version numbers and have a version library with notes of improvements. The updates should be tested by the vendor with certified documentation provided to ODOT prior to implementation. Updates provided to the whole system or subsystem should be uniformly applied so that all components continue functioning properly together.

New versions of the CVE should be developed as a separate version in the Configuration Management (“CM”) Library that holds any required software, with changes to code identified in relevant code headers.

Upon implementation, all updates will be reviewed and approved by ODOT prior to being considered complete. During the entirety of this project, the CVE should be maintained through two operating environments – test and production.

Data Management

The CVE should generate high-fidelity data fused from multiple data sources. The CVE should provide data collection, normalization, filtering, aggregation, processing, and dissemination. The CVE should provide real-time data that is consumable and will support low-latency applications and operational needs. Contractor should ensure that data from multiple sources in differing formats is free from redundancies and inconsistencies. The CVE should use filtering processes to ensure less reliable data does not interfere with highly reliable data during data processing, analytics, decision support, and reporting.

The CVE should leverage real-time and non-real-time data points from moving vehicles and turn the data into actionable information, in real-time. While the CVE may integrate with other data sources and systems as determined by the planning and design process, the CVE should integrate with the following platforms:

- OReGO – Data on road usage as attributed to a Vehicle Identification Number (“VIN”) should allow integration with the account managers for the OReGO system.
- RITIS –Probe data from the CVE should integrate with analytical tools provided by RITIS.
- TripCheck Data Portal API - The CVE should integrate with TripCheck Data Portal API where ODOT makes all real time data available via an Extensible Markup Language (“XML”) and JSON protocol.
- Connected vehicles via a telematic solution from OEM partners - Data should be provided by OEM partners from connected vehicles via a telematic solution. Aftermarket solutions and hardware specific solutions, like dongles, should not be relied upon for the operation of the CVE.
- Vehicle-to-infrastructure applications
- Central traffic signal systems

Future development of the CVE may require the establishment of new API’s to ingest data from other various sources.

CVE data should be available to Agency stakeholders and users, which include Transportation Operations Center (“TOC”) operators, OReGO account managers, researchers, industry providers, OEMs and third-party providers to the Agency. Optionally, the Contractor may enter into data agreements with traffic signal controller manufacturers, additional automotive OEMs and other data providers and sources to obtain additional data, including data from local agencies’ Advanced Transportation Management Systems (“ATMS”).

The Contractor’s CVE solution should maintain and adhere to State policies regarding Publicly Identifiable Information. The CVE data structure should enable both the user account-based information needed for RUC applications as well as the anonymized data that can be utilized for ITS applications. The CVE solution should allow for the development of specific data archiving and reporting rules and procedures.

System operations and performance

The CVE should work in an operating environment with a single sign-on solution, should operate the same regardless of operating systems or workstations, and should save user preferences, if applicable.

The CVE should be able to work with any number of concurrent users of the CVE. The CVE should be reliable so that it is available for use 24 hours a day/365 days per year, provide continuous system operational status, and create backups, at least, every week. The anticipated level of service (uptime) should be provided as part of the response.

Administration and security

The CVE solution should allow for the development of specific system administration and security control policies.

The Contractor's CVE solution should support ongoing operations covering the following areas with documentation describing each concept or process.

- System architecture illustrating each component and their interactions with each other and Agency systems
- Installation, support, and maintenance of servers, networks and other systems
- Redundancies, rollovers, and recovery
- Incident detection, antivirus and antimalware applications with scan frequencies, response and remediation
- System performance tuning
- Routine regular reporting to Agency related to the above areas

The Contractor's CVE solution should implement cybersecurity and data protection for systems and data transmitted and stored through due diligence and applied best practices with documentation describing each concept or process.

- Process for RSU deployment and security certificates for V2X applications and the platform
- Process for Information Asset Classification in accordance with the Oregon statutes for Information Asset Handling Requirements
- Secure Level 3 data at rest and in transmission between any system components should be in accordance with current National Institute of Standards and Technology ("NIST") guidelines
- Only authorized recipients should have access to specific data by type and application
- Implement intrusion detection for cloud storage and communication between platforms that make up the CVE
- Document Security Plan outlining a description of policies and procedures
- Document security capabilities including use of network firewalls (virtual as part of a cloud solution) to control access to the platform, data encryption and the option to provide private, or dedicated, connections for each user, as needed.

Warranty and maintenance

The Contractor's solution must provide Warranty and Maintenance support.

F. CONTINGENCY TASKS

Agency, at its discretion, may authorize Contractor to perform contingency tasks identified in the Work Order

Contract. Details of the contingency tasks and associated Deliverables are stated in the Task section of the SOW. Contractor shall complete only the specific contingency task(s) identified and authorized via written (email acceptable) Notice-to-Proceed (“NTP”) issued by APM. If requested by Agency, Contractor shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) identified for the contingency task Summary Table) within the scope of the contingency task.

If Agency chooses to authorize some or all of these tasks, Contractor shall complete the authorized tasks and Deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE amount for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. The “NTE for Each” amount identified in the Work Order Contract for a contingency task includes all labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the Work Order Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the Work Order Contract. Each authorized contingency task must be billed as a separate line item on Contractor’s invoice.

Exhibit B

Required Insurance

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

For purposes of this **Exhibit B**, the term "Contract" is interchangeably used with "Work Order Contract", "WOC", "Purchase Order" and "PO". ODOT reserves the right to assess the risk for all WOCs or POs, as applicable, assigned under this Price Agreement to determine if additional insurance coverage is appropriate.

If the term "Consultant" is used in the Price Agreement, then references in this **Exhibit B** to "Contractor" shall be read to mean "Consultant".

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by ODOT under this agreement and to provide updated requirements as mutually agreed upon by Contractor and ODOT.

SUBCONTRACTORS:

Contractor shall require that all of its subcontractors carry insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Price Agreement.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

Required by ODOT of Contractors with subject workers, as defined by ORS 656.027.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

All employers, including the Contractor and Subcontractor(s), if any, that are exempt under ORS 656.126(2) and subject to any other state's Workers' Compensation law, shall provide Workers' Compensation Insurance coverage as required by applicable Workers' Compensation laws. The coverage shall also include Employer's Liability Insurance with limits not less than \$500,000 each accident.

PROFESSIONAL LIABILITY

Required **Not required**

Contractor shall provide Technology Errors & Omissions insurance in an amount of not less than **\$2,000,000** per claim covering Contractor's liability arising from acts, errors or omissions in rendering or failing to render computer or information technology services, including the failure of technology products to perform the

intended function or serve the intended purpose as set forth in this Contract. This insurance must include coverage for violation of intellectual property rights including trademark and software copyright, privacy liability, the failure of computer or network security to prevent a computer or network attack, misrepresentations, and unauthorized access or use of computer system or networks. This insurance must also include coverage for unauthorized disclosure, access or use of Agency Data (which may include, but is not limited to, Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”) in any format. Coverage must extend to independent contractors providing Services on behalf of or at the direction of Contractor.

If this insurance is provided on a “claims made” basis, Contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless **3 years** or **5 years** is specified, after completion of the Contract or for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Price Agreement.

COMMERCIAL GENERAL LIABILITY

Required

Commercial General Liability insurance must be issued on an “occurrence basis” covering “bodily injury” and “property damage” and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage.

- Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** **\$2,000,000** **\$5,000,000** per occurrence.
- Annual aggregate limits shall not be less than **\$2,000,000** **\$4,000,000** **10,000,000**.

AUTOMOBILE LIABILITY

Required **Not required**

Automobile Liability insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for “bodily injury” and “property damage”, with a combined single limit of not less than **\$1,000,000** **\$2,000,000** **\$5,000,000**.

EXCESS/UMBRELLA LIABILITY INSURANCE:

A combination of primary and Excess/Umbrella Liability insurance may be used to meet the required limits of insurance.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days’ written notice to ODOT before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to ODOT Certificate(s) of Insurance for all required insurance before delivering any Goods or performing any Services required under the Contract. The Certificate(s) shall:

- ✓ List the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as a Certificate Holder and **endorse** as an Additional Insured.
- ✓ Include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract.
- ✓ Specify that all liability insurance coverages shall be primary and non-contributory with any

other insurance and self-insurance, with exception of Professional Liability and Workers' Compensation

- ✓ If Excess/Umbrella Liability insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella Liability insurance.

If ODOT has on file current certificates of insurance that meet all requirements of this **Exhibit B**, and ODOT provides such notification to Contractor, then submittal of certificates prior to execution of the Contract will not be required. As proof of insurance ODOT has the right to request copies of insurance policies, endorsements, self-insurance documents, and related insurance documents relating to the insurance requirements in this Contract.

ENDORSEMENTS:

- i. **Additional Insured.** The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, required for performance of the Contract must include an **"additional insured"** endorsement, endorsing the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees."** Coverage shall be primary and non-contributory with any other insurance and self-insurance. Proof of additional insured status will include copies of endorsements or policy wording which must be submitted with the Certificate(s) of Insurance.
- ii. **Commercial General Liability** must endorse the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as additional insureds with respect to liability arising out of work or completed operations performed by, or on behalf of, the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.
- iii. **The additional insured endorsement must be acceptable to ODOT.**

STATE ACCEPTANCE:

All insurance and insurance providers are subject to ODOT acceptance. In addition, all of the following are subject to ODOT acceptance and, if requested by ODOT, the Contractor shall provide complete copies of the following to ODOT's representatives responsible for verification of the insurance coverages required by the Contract: insurance policies, endorsements, self-insurance documents and related insurance documents.

Exhibit C

Special Terms and Conditions

- 1. Performance Evaluations.** Agency may conduct performance evaluation(s) of Contractor and its subcontractors during the term of the Price Agreement, which will be compiled and maintained by Agency, and become a written record of Contractor's performance, including information gained during an exit interview. Generally, performance evaluations will include evaluation and scoring of various criteria related to, but not limited to, the following categories: (a) project management and coordination of staff and subcontractors, (b) project communication and responsiveness, (c) cost effectiveness and completing work within budget, (d) technical accuracy and quality control, (e) schedule performance. Agency will provide copies of any performance evaluation documentation to the affected Contractor or subcontractor and upon request, to third parties, unless lawfully exempt from disclosure.

In the event of a dispute regarding a Contractor's performance evaluation, Contractor may request a teleconference (or meeting at Agency) with Agency's Project Manager (APM) and Agency's Contract Administrator. If the dispute cannot be resolved with discussions or upon receipt of any follow-up documentation requested, Agency's Contract Administrator, in consultation with the applicable Area or Program Manager and APM shall make the final decision regarding the score received on a particular Form. Agency may adjust score(s) upon Agency's finding of good cause.

Agency's Use of Performance Evaluation. Agency may, at its sole discretion, use performance evaluation findings and conclusions in any way deemed necessary by Agency, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Contractor, withholding of retainage, determining eligibility for future Price Agreement assignments, and as a criterion of selection for future Agency contracts.

- 2. Dispute Resolution.** In the event of a dispute between the Parties regarding any aspect of the Price Agreement or Work Order Contract or performance under the Work Order Contract, the Parties agree to attempt in good faith to resolve any such dispute through direct communications and negotiations. In the event good faith efforts do not resolve the dispute, the Parties agree to make a good faith effort to determine if mediation might resolve any such dispute. If the Parties determine that mediating the dispute would be productive, the Parties agree to use reasonable efforts to establish an agreement through which such mediation proceeding could take place. In the event such a mediation proceeding takes place, the Parties acknowledge and agree that any mediator or mediators retained to assist the Parties in resolving any dispute will not have the power to issue a binding decision on the Parties but will merely act to facilitate the process of the Parties' attempt to resolve the dispute through mutual agreement.
- 3. Non-Exclusive Agreement.** This Price Agreement is established for the convenience of ODOT. ODOT makes no guarantee of any minimum or maximum purchases under this Price Agreement. ODOT reserves the right to contract for the purchase of similar services outside of this Price Agreement in accordance with applicable law.
- 4. IT Terms.** Exhibit C-1 sets forth additional terms applicable to WOCs for Contractor Software implementation and solutions.

Exhibit C-1

Terms applicable to WOCs for Software Implementation and Solutions

[Reserved]

Exhibit D

Federal Terms and Conditions

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS - (No-Goal)

For purposes of these DBE Provisions, “Contract” means any project-specific contract, Price Agreement (“PA”), Work Order Contract (“WOC”), Task Order, or any other contract entered into with ODOT (or local agency when applicable). “Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See section e for specific reporting requirements of Contractor.**

- a. Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- [ODOT DBE Policy Statement](#)
- [ODOT DBE Program Plan](#), and
- Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. DBE Goals:** ODOT’s overall goal for DBE participation is 15.37% for FHWA funded Contracts and 6% (proposed) for FTA funded Contracts. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

A DBE participation goal has not been established for this procurement.

- c. Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this USDOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory

performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from ODOT (or local agency when applicable). In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.

- e. **Reporting Requirements:** Contractor shall complete and submit initial, interim and final Paid Summary Reports [form 734-2882] per the instructions on the form. Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal is assigned.**
- f. **Commercially Useful Function:** For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful function (“CUF”) as set forth in 49CFR § 26.55. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Termination of DBE Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. See additional requirements of 49 CFR § 26.53(f) regarding termination of a DBE.
- h. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- i. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.oregon.gov or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- j. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

Related Web Sites:

All forms, documents and CFRs referenced or linked in these DBE Provisions are available on line at:

- **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&dno=49>

Acronyms & Definitions for DBE Provisions

APM	ODOT's or local agency's Project Manager for the WOC
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
PA	Price Agreement
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation
WOC	Work Order Contract

Exhibit E

Independent Contractor Certification

The undersigned certifies that Contractor meets the following standards:

1. Contractor is registered under ORS chapter 701 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's firm or a business Schedule C as part of the personal income tax return, for the previous year, or Contractor expects to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. Contractor shall 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. Contractor represents to the public that the labor or services are to be provided by Contractor's 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 Contractor's residence or is primarily carried out in a specific portion of Contractor's residence, which is set aside as the location of the business.
- B. Commercial advertising or business cards are purchased for the business, or Contractor has 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. Contractor assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature: _____ **Date:** _____

Exhibit F

Compensation Provisions - Part 1

A. METHOD OF COMPENSATION and PAYMENT OPTIONS

Contractor shall complete all Services and provide all Deliverables as defined in the Work Order Contract. If the applicable compensation is exhausted, but Services and Deliverables are not complete, Contractor shall complete the Services and provide the Deliverables to Agency's satisfaction without additional compensation.

The amount payable under the Work Order Contract may be adjusted by Agency or renegotiated to:

- Reduce the NTE or Fixed-Price amount associated with tasks/Deliverables that were not authorized by Agency or not performed by Contractor;
- Reduce the NTE or Fixed-Price amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Work Order Contract;
- Increase the NTE or Fixed-Price amount for additional tasks/Deliverables added to the scope of work via amendment to the Work Order Contract.

A.1 METHODS OF COMPENSATION

Each WOC will identify one of the following options for basis of payment applicable to the specific WOC:

(a) FIXED PRICE

- Agency will pay Contractor for the actual Services performed under the Work Order Contract according to the Fixed Price amount(s) established in the Work Order Contract. The Fixed Price amount(s) includes all labor costs, overhead, profit, and may include expenses (if travel or other expenses are approved). The Fixed Price amount(s) must not include any unallowable indirect or direct costs, including travel which must be based on the allowable travel and lodging rates identified in Section B of this Exhibit.
- Contractor acknowledges and agrees that the Fixed Price is only due and payable for work authorized by Agency and satisfactorily completed by Contractor.

The dollar amount for Fixed Price Services is entered in Section A.3, line 3 of the Compensation Summary Table.

(b) TIME AND MATERIALS WITH NOT-TO-EXCEED (T&M)

Agency will pay Contractor for completion of Services required under the Work Order Contract on the basis of T&M, up to the NTE amount established in the Work Order Contract. Billable items include:

- **Loaded Costs**— Actual fully loaded billing rates (inclusive of labor, profit and overhead costs) for employees productively engaged in work to complete the Services required under the Work Order Contract, up to the maximum rate approved for the employee's classification;

- **Direct Non-Labor Costs** (without mark-up) - Approved travel costs (up to the rates established in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in the fully loaded billing rates.
- **Subcontractor Costs** (without mark-up, unless Agency’s Procurement Office notifies Contractor otherwise in writing) - the hourly labor rates and direct non-labor costs (as described above) that have been billed to Contractor and recognized by Contractor as valid, undisputed and payable.

The dollar amount for T&M Services is entered in Section A.3, Compensation Summary Table.

(c) PRICE PER UNIT

Agency will pay Contractor for completion of Services required under the Work Order Contract on the basis of Price Per Unit, up to the NTE amount established in the Work Order Contract. The Price Per Unit amount includes all labor costs, overhead, profit, and may include expenses (if travel or other expenses are approved). Agency may exclude travel (or other expenses) from the Price Per Unit amount and reimburse Contractor at cost for approved travel in accordance with Section B of this Exhibit (up to the NTE established for travel and other expenses).

Price Per Unit Table

Task No. and Unit Description	Price Per Unit	Max Quantity	Unit Price or NTE per item
Total NTE			_____
(Enter this amount in Section A.3, Line 3 of the Compensation Summary Table):			_____

Mixed Method of Compensation

The methods of compensation for non-contingency tasks in this Price Agreement are:

- Fixed Price for the following tasks: _____
- T&M for the following tasks: _____
- Cost reimbursement for allowable travel expenses. The NTE amount for travel expenses is entered in Section A.3, line 4 of Compensation Summary Table.
- Price Per Unit detail is provided in Section A.1(c) below.

A.2 PAYMENT OPTIONS

Payments will occur only after Agency has determined that Contractor has completed, and Agency has accepted, the required Services (including defined Deliverables) for which payment is sought via a properly submitted and correct invoice.

Each WOC will identify one or more of the following options for basis of payment applicable to the specific WOC:

Progress Payments for Acceptable Progress. Agency will pay Contractor monthly progress payments, up to the Work Order Contract NTE amount, for Contractor’s acceptable (and verifiable) progress on tasks and Deliverables included in the invoice.

Progress Payments for Percentage of Services Completed. Agency will pay Contractor monthly progress payments based on a percentage of the total agreed fixed price. Monthly progress payments shall be limited to an amount commensurate with the percentage of the total Services and Deliverables that were completed in the month invoiced.

Payment upon Milestone (or other Unit) Completion. Agency will pay Contractor the fixed price per milestone amount(s) or all amounts due as prices for completed milestones (or other units) indicated in the Work Order Contract, up to the Work Order Contract NTE amount.

Single Payment for Full Completion. Agency will pay Contractor all amounts due under the Work Order Contract in one lump-sum payment, up to the Work Order Contract NTE or Fixed-Price amount, upon Agency’s acceptance and approval of all Services (including Deliverables) required under the Work Order Contract.

A.3 TOTAL NOT-TO-EXCEED (NTE) AMOUNT SUMMARY TABLE

	Compensation Summary Table	Amount \$___ (or) N/A
1. Fixed Price Amount	Total of non-contingency Fixed Price amount(s)	
2. T&M NTE Amount (or) Travel NTE Amount	Total for any non-contingency Services	
3. Price Per Unit NTE Amount		
4.	Total Non-Contingency Amount:	\$
5.	Total for Contingency Tasks (if any) per Exhibit A, Section F:	\$
	TOTAL NTE (line 4 plus line 5)	
This amount includes all direct and indirect costs, profit, Fixed Fee amount (if any) and contingency task costs (if any).		\$

B. TRAVEL

The Fixed Price amount(s) in the Work Order Contract includes all travel, lodging, per diem, and mileage expenses. Agency will not reimburse Contractor separately for travel related costs.

Travel costs are allowable only if they are authorized under the Work Order Contract and if the travel is essential to the normal discharge of Agency's responsibilities and is related to official Agency business. **In accordance with the Travel chapter of the Oregon Accounting Manual, available at the following web address: <https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>, all travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the state.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Work Order Contract:

- The travel, lodging, and per diem rates referenced in this Section B are the maximums that Contractor's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section B may be negotiated in the Work Order Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller in the Travel chapter of the Oregon Accounting Manual.
- Mileage - For compensation based on T&M (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by Agency will be reimbursed according to the rates set forth by the State Controller in the Travel chapter of the Oregon Accounting Manual in effect on the date when the travel occurs.
- For all methods of compensation; cost estimates for mileage, lodging and per diems for approved travel shall be based on the rates in effect on the date when the Work Order Contract is executed.
- For compensation based on T&M, Contractor shall submit receipts for travel-related expenses billed to Agency, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official state business who shared the room.
- **For lodging** expenses approved by Agency, Agency will reimburse up to the maximum rates set forth in the Travel chapter of the Oregon Accounting Manual in effect on the date when the travel occurs or the actual cost, whichever is less.
- Approved **meal per diem allowances** must be in conformance with the Travel Policy found in the Oregon Accounting Manual in effect on the date when the travel occurs.

C. INVOICES

Contractor shall submit invoices electronically via e-mail (unless stated otherwise in the Work Order Contract), to the address as indicated in the Work Order Contract. Each Work Order Contract must be invoiced separately. Contractor shall not submit invoices to Agency any more frequently than once per month. Unless a different schedule is set forth in the Statement of Work, Contractor invoices are due no later than 20 business days following the end of the month in which the Services were rendered. If Contractor fails to present invoices in proper form within 60 calendar days after the end of the month in which Services were rendered, Contractor waives any rights to present such invoice thereafter and to

receive payment therefor. Contractor shall include in each invoice the information required in Agency's "Invoice Requirements Guide" per the method(s) of compensation used for the Work Order Contract. The Invoice Requirements Guide (as may be revised from time to time) is available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx> (under "Guidance, Policy & Resources").

Contractor shall prepare invoice(s) based on the payment option identified in section A.2 of Exhibit F or, if applicable, as set forth in the Work Order Contract.

Progress Reports: Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/Deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/Deliverable with the schedule identified for each.
- The budget shown for each task is the best estimate at time of Work Order Contract (and amendment, if applicable) execution. However, as work under the Work Order Contract progresses it may dictate that more funding be applied to some tasks and products and less to others. Contractor shall monitor such needs on an ongoing basis and, when needed, propose on a monthly basis as part of the invoicing and status report, budget refinements (within the limits of the not-to-exceed amount established for the Work Order Contract) to Agency for approval.
- Identify issues/concerns that may affect the project SOW, schedule or budget.

T&M Compensation:

- Contractor's invoices must not exceed the hourly rates approved for each respective classification in the Work Order Contract.
- Contractor shall provide documentation in each invoice to itemize all reimbursable labor costs and direct non-labor costs for which Contractor seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include copies of all invoices, similarly detailed, from authorized subcontractors.
- Agency will reimburse Contractor for approved travel expenses incurred in accordance with **Exhibit F**, Section B of the Price Agreement, if Agency has agreed to reimburse Contractor for travel expenses.

Fixed-Price Compensation:

- For "Full Completion" payment option, Contractor shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by Agency.
- For "Monthly Progress Payments for Percentage of Services Completed" payment option, Contractor invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

Price Per Unit Contracts: Contractor's invoices must not exceed the Fixed Price (or NTE amount for T&M) indicated in the Work Order Contract for each unit.

Additional Requirements:

- Invoices must include a detailed breakdown of labor and allowable expenses for any T&M amounts included in the invoice.
- Agency may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Contractor. Contractor shall provide written itemization and receipts to Agency within 5 Business Days of Agency's request. Agency will not make payment to Contractor under the applicable invoice until Agency has received all requested receipts from Contractor.
- Any overdue payments to Contractor by Agency for an approved invoice are subject to ORS 293.462.

D. PAYMENT TERMS

Agency Payments to Contractor. Payment will be made to Contractor no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. Agency will endeavor to notify Contractor within 10 business days of receipt of invoice regarding any necessary revisions to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from Agency's receipt of the revised and properly completed invoice. Any interest for overdue payment will be in conformance with Oregon law.

Direct Deposit via Automated Clearing House ("ACH"). For Contractors that receive ongoing monthly payments from Agency on one or more contracts or work orders, Agency prefers making payments via ACH direct deposit. While not required, if Contractor has not previously authorized ACH direct deposit and would prefer ACH to expedite transfer of payments after invoices are approved, Contractor must complete a [Vendor ACH Authorization form](#) and submit to Agency per the instructions on the form.

Contractor Payments to Subcontractors. Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from Agency for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from Agency, Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by APM. To expedite Contractor's payments to its subcontractors, Contractor should make reasonable efforts to offer ACH direct deposit payments.

E. CORRECTIVE WORK

Contractor shall complete all Services, including Deliverables, as required in the SOW to Agency's satisfaction. If Agency, in its sole discretion, determines that the Services or associated Deliverables, or both, are unacceptable, Agency shall notify Contractor in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Contractor shall respond to Agency outlining how the deficiency shall be corrected. Contractor shall correct any deficiencies in the Services and Deliverables to Agency's satisfaction without further compensation. If resolution is not achieved, Agency may withhold other payments until deficiencies have been corrected to meet Work Order Contract requirements. Agency shall not unreasonably withhold payment.

F. WITHHOLDING/RETAINAGE

Agency reserves the right to initiate, at any time during the Work Order Contract, withholding of payment equal to 5% of the amount of each invoice submitted to Agency under the Work Order Contract. Agency will make final payment of any balance due to Contractor promptly upon verification of completion and acceptance of all Services by Agency and will pay interest as required on retainage.

G. PAYMENT REDUCTION

Agency, or its duly authorized agents, may audit Contractor's fiscal records at any time. If Agency finds previously undisclosed inaccurate or improper costs have been invoiced and paid, Agency will notify Contractor and seek clarification. Agency, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Contractor, withhold the inaccurate or improper amounts from final payment to Contractor, or may use any other means to seek recovery of already paid but improperly calculated amounts.

H. RATE REVISIONS

Contractor's hourly rates applicable to this Price Agreement shall be subject to review and approval by Agency. The hourly rates approved for use under this Price Agreement shall remain in effect throughout the duration of the Price Agreement unless revisions are approved by Agency. Hourly rates and other pricing submitted in a price proposal or rate schedule for evaluation and scoring under the solicitation for the Work Order Contract shall remain in effect for not less than the first 12 months of the Work Order Contract. Any approved revisions to the hourly rates allowable under the Price Agreement shall not cause an increase in the Work Order Contract NTE amount (exceptions may be approved by Agency on a case-by-case basis).

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

For T&M compensation, Contractor shall invoice Agency only for actual productive time Contractor personnel spend on Services by any level of Contractor's staff (up to the established not-to-exceed amount). Contractor's general supervisors or personnel who are responsible for more than one Agency project shall charge only for actual productive time spent directly on the project identified in the Work Order Contract.

Agency will pay Contractor only up to the hourly rates set forth in the Price Agreement that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual performing those Services.

Discriminatory Pricing. Charges as applied to work performed under Agency contracts and subcontracts may not be discriminatory against Agency. It is discriminatory against Agency if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-Agency work under comparable circumstances (see FAR Subpart 31.205-6).

Unallowable Charges

Agency will not pay for direct or indirect costs that are unallowable under the provisions of 48 CFR Part 31 (Federal Acquisition Regulations).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Work Order Contract or Work Order Contract amendments, including but not limited to proposal preparation, cost estimate preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes, including but not limited to discussions, meetings and preparation of any dispute related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Costs for general administrative, non-project related tasks.
- Transfer of knowledge and information related to Project Manager or other Key Person replacements.
- Cost of preparing invoices and supporting documentation when the cost to prepare or provide such invoices or supporting documents has been included in Contractor's overhead.
- Costs for correcting or making adjustments to incorrect or improper invoices;
- Any unallowable expenses for non-travel meals and refreshments under the provisions of the **Oregon Accounting Manual, Non-travel Meals and Refreshments section.**

Exhibit F, Part 2 – Cost Information

A. BILLING RATE SCHEDULES

Contractor shall, and shall cause each of its subcontractors, if any, to submit electronically to Agency a completed Billing Rate Schedule. The rate schedule must include fully burdened billing rates inclusive of labor, overhead, and profit. The billing rates invoiced under the Work Order Contract must be within the maximum rates per the classifications listed in the billing rate schedule and no greater than the lowest rates charged to other public or private clients for similar services.

Prior to approval of additional subcontractors, Contractor shall provide to Agency any requested documentation of qualifications and experience of the prospective subcontractor and its staff.

The billing rate schedule for Contractor (and each approved subcontractor, if applicable) is not physically attached but is incorporated into this Exhibit F by this reference with the same force and effect as though fully set forth herein. A copy of the approved billing rate schedule(s) has been provided to Contractor prior to Contract execution.]

B. DETAILED PRICE BREAKDOWN

Prior to execution of the Work Order Contract and any amendments that add Services, Contractor shall prepare and submit a detailed estimate based on the rates approved for the Price Agreement.

The estimate must include a detailed breakdown for each element of the work regardless of compensation method. The estimate must identify:

- a) the proposed staff assignments (classifications, and names if requested, and qualifications) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the price breakdown as provided by each subcontractor that shows the assigned staff (classifications, and names if requested) and hours per task and sub-task and itemized direct non-labor costs. Agency

may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation; and

- d) **Contingency Tasks.** Amounts for any contingency tasks (if any) must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

Notes:

- The price breakdown must be developed using approved labor rates and allowable expenses as described in this **Exhibit F**.
- No mark-up is permitted on subcontractors or direct non-labor costs.

Exhibit G
Title VI Non-discrimination Provisions

During the performance under this Price Agreement, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- a. Compliance with Regulations:** Contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Price Agreement.
- b. Nondiscrimination:** Contractor, with regard to the work performed by it during the Price Agreement, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Price Agreement or WOC covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Price Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. Information and Reports:** Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Agency, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Agency, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this Price Agreement, Agency shall impose such Price Agreement or WOC sanctions as it, FHWA or FTA may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to Contractor under the Price Agreement and WOC until Contractor complies, and/or
 - (ii) Cancellation, termination or suspension of the Price Agreement, the WOC or both, in whole or in part.

Incorporation of Provisions: Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Agency, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Agency, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit H
Work Order Contract (“WOC”) Assignment and Requirements

1. WOC ASSIGNMENT

WOCs will be assigned as needed by Agency, and there is no guarantee that any specific amount of Services or overall dollar amounts will be assigned to Contractor.

1.1. Price Estimate and Negotiation

Selections not based on scored price proposals or low bid. Upon request by Agency, Contractor shall submit a detailed price proposal that conforms to the requirements set forth in Exhibit F, Part 2. Agency and Contractor will negotiate the statement of work, schedule and price.

WOC Amendments: Agency and Contractor will negotiate WOC amendments. For amendments that add costs, Contractor shall submit a detailed price proposal that conforms to the requirements set forth in Exhibit F, Part 2.

If negotiations of the SOW tasks, deliverables and schedule occur, Contractor shall submit a revised cost estimate, if requested by Agency, to reflect any changes agreed upon during negotiations.

When detailed competitive price proposals are not included in the WOC selection criteria: Following negotiation of the SOW tasks, deliverables and schedule for the project, Contractor shall submit to Agency a detailed price proposal that conforms to the requirements set forth in Exhibit F, Part 2.

All selections for WOC assignments are tentative until negotiation of SOW and reasonable pricing within project budget are completed, all required signatures and approvals have been obtained on the WOC, and ODOT has issued a notice to proceed to Contractor. If negotiations fail to conclude in an agreement, Agency, at its sole discretion, may solicit separately for the Services or take other action Agency deems appropriate.

2. WOC REQUIREMENTS

2.1. General Requirements

Contractor shall perform Services under the PA only after receipt of notice to proceed under an Agency issued and fully executed WOC. Each WOC must indicate the maximum amount payable to Contractor. **WOC Document:** A sample WOC Form, which may be revised by Agency from time to time, is incorporated by this reference and available at the following Agency Internet site: . At the time a WOC is issued, the most recent available version of the Non-A&E WOC form will be used.

If Contractor refuses to enter or cannot comply with a WOC assignment, an authorized representative of Contractor shall submit to Agency a written justification for the refusal within 3 business days of Contractor’s receipt of Agency’s request for the WOC, or according to other Agency direction specified in the request. If Contractor refuses an assignment or takes more than the required response time to respond to Agency’s request, Agency may offer the WOC to the next ranked Contractor, if any, or solicit separately for those Services, or take other action Agency deems appropriate.

The amount payable under each WOC may only be exceeded upon the prior written approval by Agency through a WOC Amendment. No Services under a WOC or WOC Amendment shall begin before Agency, Contractor and any other required signatures are obtained on the WOC or WOC Amendment, and NTP is issued.

Contractor agrees to perform the Services, provide the deliverables and meet the performance standards set forth in the final negotiated statement of work of an assigned WOC, and shall comply with, all requirements, specifications and terms and conditions contained within the WOC and PA (including all amendments to the WOC and PA, if any).

2.2. Statement of Work

The SOW must include the Services to be performed by Contractor, a schedule for performance, and specific deliverables. All Services included in the SOW must be within the Scope of Services included in the PA.

2.3. Aspirational Targets

A 12% Certified Small Business Aspirational Target will be assigned to WOCs that are State-only funded and that exceed \$100,000, including as amended. Aspirational Targets are not binding on Contractor but will be listed in the WOC for informational purposes. (For additional information see PA **Exhibit H**, Certified Small Business Aspirational Target Provisions.)

2.4. Conflict of Interest (COI) Disclosure

For all WOC assignments, Contractor shall ensure its COI disclosures are in conformance with the ODOT Conflict of Interest Guidelines and the COI Disclosure Form (as may be revised from time to time), available at: <https://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx>.

EXHIBIT I
PRIVACY AND SECURITY REQUIREMENTS

For purposes of clarity, the terms and conditions in this Exhibit I shall not apply to Phase 0 Services, work, Deliverables or Work Product.

Contractor's obligations under this Contract include the requirements of this Exhibit J.

1. PURPOSE. The terms and conditions of this Privacy and Security Requirements exhibit address:

- 1.1. Contractor's Use of Agency Data;
- 1.2. Contractor's access to State systems and networks;
- 1.3. Contractor's Services and delivery of the System; and
- 1.4. The periodic exchange of Agency Data between Agency's and Contractor's systems via electronic means.

2. COMPLIANCE REQUIREMENTS.

2.1 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:

- 2.1.1. The Oregon Consumer Identity Theft 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 vendor.
- 2.1.2. Oregon's Statewide Information Security Standards: <https://www.oregon.gov/das/OSCIO/Documents/2019StatewideInformationAndCyberSecurityStandardsV1.0.pdf>, including security controls that meet or exceed "Moderate" security controls in the [National Institute of Standards and Technology \(NIST\) Special Publication \(SP\) 800-53](#).
- 2.1.3. Oregon's Statewide Information Security Plan: <https://www.oregon.gov/das/OSCIO/Documents/StatewideInformationSecurityPlan.pdf>.
- 2.1.4. Oregon's Statewide IT Policies: <https://www.oregon.gov/das/Pages/policies.aspx#IT>.

3. NOTIFICATIONS.

3.1 Breach Notification. In the event Contractor or its subcontractors or agents discover or are notified of an incident or a breach, including a failure to comply with Contractor's confidentiality obligations under this Contract, Contractor shall notify the State's Contract Administrator (or delegate) immediately, and in no event more than 24 hours following discovery or notification of the incident or breach. 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.

3.2 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. HOSTING OBLIGATIONS. [If applicable]

- 4.1. Hosting Services.** Services are provided via [provide information on hosting services, including any named vendor and certification], which are located within the continental United States. This is a material representation of fact upon which Agency may rely. Contractor shall not transfer or materially modify these hosting services without advance written consent from Agency's Authorized Representative.
- 4.2. Encryption.** Agency Data on or in Contractor's system must be encrypted in accordance with FIPS 140-2 validated encryption algorithm, when at rest and during transit.
- 4.3. Third Party Audit.** All aspects of the Services must meet the criteria of the American Institute of Certified Public Accounts for SOC 2 Type II, including access controls; availability; processing integrity; data confidentiality; and data privacy, collection, use, retention, disclosure, and disposal. Contractor shall ensure it and its subservice organizations undergo periodic examinations from an independent auditor to verify continued compliance. Contractor shall provide an exact copy of the most recent examination results report to Agency upon request.

5. PRIVACY OBLIGATIONS. In addition to Contractor's obligations under the terms and conditions of the Contract:

- 5.1 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 Agency except as required by other terms of this Privacy and Security Requirements exhibit or applicable law.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.

- 5.7 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.
- 5.8 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 for OHA to:
- 5.8.1. Determine Contractor's compliance with this Privacy and Security Requirements exhibit,
 - 5.8.2. Validate Contractor's written security risk management plan, or
 - 5.8.3. Gather or verify any additional information Agency may require to meet any state or federal laws, rules, or orders.
 - 5.8.4. 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 software), required to perform examinations and audits, and to make excerpts and transcripts, including for data forensics.

6. ACCESS TO STATE SYSTEMS.

- 6.1 Agency Review of Access Requests.** If required for access to State networks and systems, Agency will review requests and will:
- 6.1.1. Notify Contractor of the approval or denial of its request for each user for whom access has been requested;
 - 6.1.2. Provide any unique log-on identifier required for authorized access;
 - 6.1.3. Provide updates to approved inquiry processes and instructions to Contractor.
- 6.2 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.
- 6.2.1. 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.
 - 6.2.2. Contractor is responsible for ensuring information provided by its users is accurate, complete, and up to date.
 - 6.2.3. 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.
- 6.3 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.

- 6.4 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.
- 6.5 No Overseas Access.** Contractor shall not allow access to the Production Environment, or access to, transmission of, or storage of Agency Data, 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. Services may be provided from Canada based resources who solely access Agency data through secure remote access to United States-based servers.
- 6.6 Authorized Access and Use Only.** No user may access or use Agency Data for any purpose other than those specifically authorized through this Contract.
- 6.6.1. Users shall not use access to obtain or attempt to obtain any Agency Data or information assets not authorized or intentionally made available.
- 6.6.2. 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.
- 6.6.3. Except as otherwise specified or approved by Agency, neither Contractor nor its users may modify, alter, delete, or destroy any information asset.
- 6.7 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 through 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.
- 6.8 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.
- 6.9 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.
- 6.10 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 System, 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 System 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.

- 6.11** 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.

7. SUSPENSION OR TERMINATION.

- 7.1** 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.

- 7.2** 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.

- 8. 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.

- 8.1** 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 on request provide Agency with written certification of sanitization.

- 8.2** 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.

- 9. 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.

10. 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.

11. SUBCONTRACTORS. Contractor shall ensure all subcontractors providing services related to this Privacy and Security Exhibit comply with its terms.