

## RFP ATTACHMENT B

### STATE OF OREGON

#### **[SAMPLE] INFORMATION TECHNOLOGY SERVICES CONTRACT**

This Information Technology Consulting Services Contract (Contract) is entered into by and between the State of Oregon (State) acting by and through its Secretary of State's Office (Agency), and \_\_\_\_\_, an \_\_\_\_\_ corporation (Contractor) and is effective as of the Effective Date (defined below).

#### **RECITALS**

1. Agency desires to engage a Contractor to provide Search Engine Optimization & Marketing Services (the "Services" as defined below) to enable Agency to achieve specific business and Agency mission objectives defined in this Contract, including professional advice and consultation. To that end, Agency issued RFP #S-16500-00002374.
2. Contractor is the successful proposer to the RFP and Agency desires Contractor to perform the Services.
3. Contractor desires to perform the Services for Agency.

#### **AGREEMENT**

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

##### **1. DEFINITIONS.**

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

**"Acceptance Criteria"** means the criteria for accepting Deliverables required under this Contract, including but not limited to requirements and specifications for a Specific Deliverable in the applicable Statement of Work, and the Performance Warranties set forth in Section 11.2.

**"Agency Data"** means information created and information provided by Agency, and information created and collected by Contractor regarding Agency and its clients during the course of providing the Services.

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

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

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

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

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

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

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

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

**“Contractor Intellectual Property”** means any intellectual property that is owned by Contractor, Documentation, and derivative works and compilations of any Contractor Intellectual Property.

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

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

**“Deliverable Schedule”** means the attributes of the applicable Statement of Work setting forth the completion date of each Milestone, the delivery date for each Deliverable, and other dates relevant to the delivery of Services.

**“Documentation”** means all documents, including documents that are Deliverables described in a Statement of Work and which may include reports, listings, requirements documentation, and other materials that are to be delivered by Contractor under this Contract. Documentation includes documents in hard copy or electronic form.

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

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

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

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

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

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

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

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

**“Personal Information”** is defined in Exhibit I, Privacy and Security Requirements.

**“Project”** means the scope of work as described in RFP #S-16500-00002374, Section 1.5 and Attachment A.

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

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

**“RFP”** means the Request for Proposal #S-16500-00002374.

**“Schedule of Deliverables”** means the attributes of a Statement of Work that describe each Task and Deliverable, measurable attributes of each Deliverable and any associated Milestone, with identification of the Services that are associated with them, and a completion date for each Milestone and Deliverable.

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

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

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

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

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

**“Warranty Period”** means the time period specified in Section 3.5.

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

## **2. TERM.**

The Effective Date of this Contract is \_\_\_\_\_, or the date on which this Contract is fully executed and approved according to applicable laws, rules and regulations, whichever is later. This Contract terminates on [date to be determined at Contract execution], unless otherwise terminated or extended in accordance with its terms.

## **3. SCOPE OF SERVICES.**

### **3.1. Performance and Delivery.**

**3.1.1. Responsibilities of Contractor.** Contractor shall perform the Services as set forth in the applicable Statement of Work in accordance with the standards and methodologies set forth in the Statement of Work and elsewhere in this Contract. Contractor agrees to perform the Services:

**3.1.2.** Contractor shall cooperate with Agency and its designated third parties, including its Quality Assurance contractor, by providing access and information on Contractor’s Services as required for all oversight activities and Agency-identified third party services.

**3.2. Responsibilities of Agency.** If a Statement of Work requires Agency to provide any resources, and Agency fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner for a period that does not exceed thirty (30) Calendar Days, Contractor's sole remedy is an extension of the applicable delivery dates corresponding to the delay caused by Agency. If Agency's failure to provide such resources exceeds thirty (30) Calendar Days, and Contractor can show to the reasonable satisfaction of Agency that Agency's failure has resulted in an

unavoidable increase in the cost of the Services required for the Statement of Work, then Contractor will be entitled to recover from Agency the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates or recover for increased costs may be exercised only if Contractor provides Agency with reasonable notice of Agency's failure and Contractor uses commercially reasonable efforts to perform notwithstanding Agency's failure to perform.

### **3.3. Delivery and Review of Deliverables.**

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

### **3.4. Final Acceptance.** "Final Acceptance" of the Deliverables will occur when the following events have occurred, or conditions exist:

3.4.1. Agency has notified Contractor that Deliverables meet all Acceptance Criteria including as specified in the applicable Statement of Work; and

3.4.2. All Documentation is complete, inventoried, and Accepted by Agency. Contractor shall provide all text Documentation in the format specified in the applicable Statement of Work; and

**3.5. Warranty Period.** Contractor shall warrant the Accepted Deliverables for a period of ninety (90) Calendar Days following Final Acceptance. During the Warranty Period, Contractor shall, at no additional charge to Agency, furnish such materials and Services necessary to correct any deficiencies in a Deliverable that prevent the Deliverable from meeting its Acceptance Criteria and Contract warranties.

**3.6. Performance Metrics.** Contractor agrees to meet the performance metrics in the applicable Statement of Work, during the period of performance.

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

#### **4. CONTRACTOR'S PERSONNEL.**

**4.1. Key Persons.** Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's Key Persons identified in Exhibit D. Contractor's Key Persons shall not delegate performance of their powers and responsibilities they are required to provide under this Contract to another Contractor employee(s) without first obtaining the written consent of the Agency. Further, Contractor shall not re-assign or transfer a Key Persons to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace Key Persons without Agency's consent in the event any Key Persons are no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons, Agency may interview, review the qualifications of, and approve or reject the proposed replacement(s) for the Key

Persons. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency will thereafter be deemed a Key Person for purposes of this Contract and Exhibit D deemed amended to include such Key Person. Agency reserves the right to determine if a replacement Key Person has acquired the project knowledge and skills necessary to perform within the twenty-eight (28) Calendar Day period following Agency approval of the replacement Key Person.

4.1.1. Contractor shall not charge Agency, and Agency will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the parties, and will last for a minimum of fourteen (14) Calendar Days but not more than twenty-eight (28) Calendar Days, and will be reflected as an adjustment to a fee for a Deliverable associated with the replacement Key Person's Services.

**4.2. Project Manager.** Contractor shall designate a Project Manager as a Key Person for the Services. The Project Manager shall be familiar with Agency's business operations and objectives. The Project Manager will participate with Agency in periodic review sessions and will provide at Agency's request detailed progress reports that identify completed tasks and the status of the Services and Deliverables.

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

**4.4. Anti-Discrimination.** Contractor certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.212 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Contract, to maintain such policy and practice in force during the entire Contract term. Contractor's failure to maintain such policy and practice constitutes a breach entitling Agency to terminate this Contract for cause.

**4.5. Pay Equity.** As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and not unlawfully discriminate against any of its employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor's compliance with this section is a material term of this Contract, and Contractor's failure to comply constitutes a breach entitling Agency to terminate this Contract for cause.

4.5.1. As required by ORS 279B.235, Contractor may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

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

**5.1. Independent Contractor.** Contractor shall perform all Services as an independent contractor. Although Agency reserves the right to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services. Contractor declares and certifies by execution of this Contract that it is not an "officer," "employee," or "agent" of Agency, as those terms are used in ORS 30.265.

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

**5.3. Declaration and Certification as to Conflict of Interest.** Contractor by execution of this Contract declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel or Key Persons who will perform Services under this Contract; (ii) in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Services under this Contract; and (iii) this Contract and the delivery of Services creates no other violation of ORS Chapter 244 for Contractor, its agents, or subcontractors.

**5.4. Responsible for Taxes.** Contractor is responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation and payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

**5.5. Compliance with Tax Laws.** Contractor shall, throughout the duration of this Contract, comply with all tax laws of the State and all applicable tax laws of any political subdivision of the State. Any violation of this section or of Contractor's warranty in Section 11.1.7 constitutes a material breach of this Contract. Any violation of this section or Section 11.1.7 entitles Agency to terminate this Contract, to pursue and recover damages that



arise from the breach and the termination of this Contract, and to pursue all other remedies available under this Contract, at law, or in equity.

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

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

## **6. COMPENSATION.**

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

**6.2. Payments.** Payments are subject to all provisions of this Section 6.

**6.2.1. Payment of Fixed Prices.** Payments are Deliverable-based. Agency will pay to Contractor the fixed price listed in the Statement of Work for each Deliverable completed, delivered to, and Accepted by Agency.

**6.3. Retention Amount [RESERVED]**

**6.4. Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services, except those listed in the Statement of Work.

**6.5. Invoices.** Agency will pay Contractor not more than once each month upon Contractor's submission of a detailed invoice that sets forth the Services performed and Deliverables Accepted by Agency. Such invoices must comply with the requirements of this Section 6, identify the Deliverables completed and Accepted for which Contractor seeks compensation, and itemize and explain all authorized expenses for which reimbursement is claimed. Contractor shall submit invoices to Agency's Authorized Representative. Agency will have the right to review each such invoice for compliance with the requirements of this section and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462.

**6.6. Limit on Payments.** Contractor shall not submit invoices for, and Agency will not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Contract pursuant to Section 7, the amendment must be fully effective before Contractor performs Services subject to the amendment. No payment will be made for any Services performed or goods delivered before the Effective Date or after termination of this Contract.

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

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

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

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

7.1.1.1. The effective date of the Change Order;

- 7.1.1.2. A detailed description of the Services to be performed under the Change Order;
  - 7.1.1.3. The particular specification or matter in the Contract which will be altered, and the precise scope of that alteration;
  - 7.1.1.4. Whether the Change Order modifies critical path Deliverables or Milestones;
  - 7.1.1.5. Any change in the cost of the Services to be performed pursuant to the Change Order; and
  - 7.1.1.6. The cumulative cost changes of all Change Orders previously issued.
- 7.1.2. A Change Order may alter only that portion of a Statement of Work and related costs to which it expressly relates and must not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Contract. No Services may be performed pursuant to the Change Order and no payment will be made on account of the Change Order until the Change Order is fully executed and all required State of Oregon approvals are received.
- 7.1.3. **Payments.** Subject to the foregoing provisions of this Section 7.1 and performance of the Services, Agency will pay for Services performed pursuant to a Change Order according to the acceptance and payment procedures set forth in this Contract.

## **8. OWNERSHIP AND LICENSES.**

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

### **8.2. Work Product.**

- 8.2.1. Except as specified in Section 8.2.2, Contractor owns all Work Product. Such Work Product is subject to the license in Section 8.1.

8.2.2. **Agency Data.** Agency owns all Agency Data, including Agency Data that is Work Product or that is otherwise created by or resulting from the Services. Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Agency Data, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments to fully vest such rights in Agency.

**8.3. Third Party Intellectual Property.** Unless otherwise specified in a Statement of Work that Agency, on its own, will acquire and obtain a license to Third Party Intellectual Property, Contractor shall secure on Agency's behalf, in the name of Agency and subject to Agency's approval, a license to Third Party Intellectual Property provided to Agency by Contractor during the term of the Contract necessary for Contractor to deliver Contract Services and Deliverables, including Work Product. In the event that Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Contractor shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

**8.4. Open Source Elements.** Any open source materials in the Deliverables or other Work Product for which Agency may be subject to a license must be approved in advance and in writing by Agency. If Contractor desires to include open source materials, Contractor shall:

8.4.1. Notify Agency in writing that Contractor intends to include open source materials,

8.4.2. Identify the specific portion of the Deliverable or Work Product that contain open source materials, and

8.4.3. Provide a copy of the applicable license for each open source item to Agency.

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

**8.6. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any

intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

**8.7. No Rights in Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

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

## **9. CONTRACTOR'S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE.**

**9.1. Confidential Information.** Contractor acknowledges that it and its employees, agents, or subcontractors may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form obtained by Contractor or its employees, agents, or subcontractors in the performance of this Contract, including Agency Data, is deemed to be confidential information of Agency ("Confidential Information"). Contractor shall treat any reports or other documents or items (including data aggregations) 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) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**9.2. Non-Disclosure.** Contractor, its employees, agents, and subcontractors shall hold Confidential Information in confidence, using the highest standard of care applicable,

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

**9.3. Privacy and Security Requirements.** Contractor and its employees, agents and subcontractors shall comply with laws, regulations, and policies governing access to and use of Agency Data, including as required in Exhibit I, Privacy and Security Requirements, as they are stated elsewhere in this Contract, and as such laws, regulations, and policies are updated or otherwise made available to Contractor.

**9.4. Non-Disclosure Agreement.** Contractor shall upon Agency's request provide a written non-disclosure agreement for Agency's review and consent for use, and then obtain executed non-disclosure agreements from Contractor's employees, agents, and subcontractors performing Services under this Contract.

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

**9.6. Confidentiality Policies.** Contractor shall, upon Agency's request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency's review and consent. Such policies must address information conveyed in oral, written,

and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.

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

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

**10. CONTRACTOR'S PROPRIETARY INFORMATION; OREGON PUBLIC RECORDS LAWS.** Agency will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Contract and applicable state and federal law. Contractor acknowledges and agrees that any obligation of Agency to maintain the confidentiality of Contractor's proprietary information is conditioned by and subject to Agency's obligations under the Oregon Public Records Laws, including ORS 192.311 to 192.478, which may require disclosure of proprietary information as a "public record" unless exempt under ORS 192.3501 or ORS 192.502, and the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170.

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

**10.2.** Agency may disclose Contractor proprietary information to its third party Quality Assurance contractor, and to State and federal oversight authorities to make required reports, to comply with requests for information, or to comply with an audit.

**10.3.** Agency may disclose and provide copies of Contractor proprietary information to the extent disclosure is required by the Oregon Public Records Law (including ORS 192.311 to 192.478). If Agency receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor proprietary information, Agency will notify Contractor within a reasonable period of time of the request. Contractor is exclusively responsible for defending Contractor's position concerning the

confidentiality of the requested information. Notwithstanding the foregoing, while Agency is not required to actively assist Contractor in opposing disclosure of proprietary information, Agency will cooperate in good faith to the extent reasonably practicable with Contractor's efforts to protect its proprietary information.

**10.4.** The confidentiality obligations imposed by this Section 10 do not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information known to the recipient prior to the effective date of this Contract without obligation of confidentiality; (iv) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Agency is required to disclose Contractor proprietary information under clause (v), Agency will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.

**10.5. Injunctive Relief.** Agency acknowledges that Agency's use and disclosure of Contractor's proprietary information not in accordance with this Section 10 will cause irreparable injury to Contractor that is inadequately compensable in damages. Accordingly, Contractor may seek and obtain injunctive relief against the breach or threatened breach of this Section 10. Agency acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Contractor and are reasonable in scope and content.

## **11. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.**

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

11.1.1. Contractor has the power and authority to enter into and perform this Contract.

11.1.2. This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms.

11.1.3. Contractor will, at all times during the term of this Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services.

11.1.4. Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to



provision of the Services, and Contractor's provision of the Services will not violate any such law, ordinance, regulation or order.

11.1.5. Contractor's performance under this Contract to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel or Key Person that will perform Services under this Contract, and creates no other violation of ORS Chapter 244 for Contractor, its agents, or contractors.

11.1.6. The Certification Statement For Independent Contractor in the form attached hereto as Exhibit C, is true and accurate as of the Effective Date, and Contractor will notify Agency in writing if the information or certification changes during the term of this Contract such that the attached Exhibit C is no longer true and accurate.

11.1.7. To the best of Contractor's knowledge, after due inquiry, for a period of no fewer than six (6) calendar years preceding the Effective Date, faithfully has complied with:

11.1.7.1. All tax laws of the State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

11.1.7.2. Any tax provisions imposed by a political subdivision of the State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

11.1.7.3. Any tax provisions imposed by a political subdivision of the State that applied or apply to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

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

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

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

11.2.1. Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in this Contract in accordance with the highest standards prevalent in the industry or business most closely involved in

providing the Services that Contractor is providing to Agency pursuant to this Contract.

11.2.2. Through the expiration of the Warranty Period, all Deliverables delivered to and Accepted by Agency will materially conform to Acceptance Criteria set forth in this Contract, including the applicable Statement of Work and any Documentation provided by Contractor, and be free from error or defect that materially impairs their use, and be free from material defects in materials, workmanship, or design.

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

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

11.2.5. Contractor will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program that at minimum complies with the requirements of the Oregon Consumer Information Protection Act (ORS 646A.600 et. seq.) to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control.

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

**11.4.** The warranties stated above will not apply to the extent that there has been misuse of the relevant Deliverable, other than that authorized by Contractor in writing, accident, modification, or failure or damage caused by a product or entity for which Contractor is not responsible.

## **12. INDEMNITIES.**

**12.1. General Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory

penalties, costs and expenses of any nature whatsoever, including personal injury, death, damage to real property and damage to tangible or intangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract, including: (i) any claim that Contractor, a subcontractor, or Contractor's staff or a subcontractor's staff are employees of the State or Agency for any reason, and (ii) any claim against the State or Agency, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this Contract. Without limiting the generality of the foregoing, Contractor will have no obligation to indemnify Agency or the State of Oregon from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of Agency or the State of Oregon, and their officers, employees or agents.

**12.2. IP Indemnity.** In addition to and without limiting the generality of Section 12.1, Contractor expressly agrees to indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables or use thereof infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that one or more Deliverables infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Agency's prior written consent, which Agency will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Agency the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Deliverable(s) continues to function in material conformance with the specifications and meet the Acceptance Criteria set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing will be deemed a material breach of this Contract, and Agency may pursue any rights and remedies available to it under this Contract, including termination. Contractor will not be liable under this Section 12.2 for any claim for infringement based solely on the following:

12.2.1. Agency's modification of the Deliverables other than as contemplated by this Contract, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing;

12.2.2. Use of the Deliverables in a manner other than as contemplated in this Contract, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing; or

12.2.3. Use of the Deliverables in combination, operation, or use of with other materials or products other than as contemplated by this Contract, the Deliverable or its specifications, or as otherwise authorized by Contractor in writing.

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

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

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

**12.6. Insurance.** Contractor shall provide insurance as required by Exhibit B.

### **13. LIMITATION OF LIABILITY.**

**13.1.** EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 12.1, GENERAL INDEMNITY, (ii) SECTION 12.2, IP INDEMNITY, (iii) SECTION 12.5, DATA AND NETWORK SERVICES, (iv) SECTION 9, CONTRACTOR'S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE, 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 TO THE STATE FOR ANY CAUSE WHATSOEVER IS BE LIMITED TO ONE AND

ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED COMPENSATION UNDER THIS CONTRACT.

- 13.2.** EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 12.1, GENERAL INDEMNITY, (ii) SECTION 12.2, IP INDEMNITY, (iii) SECTION 12.5, DATA AND NETWORK SERVICES, (iv) SECTION 9, CONTRACTOR'S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE OR (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

#### **14. EVENTS OF DEFAULT.**

- 14.1. Default by Contractor.** Contractor will be in default under this Contract if:

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

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

- 14.2.1. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

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

## **15. REMEDIES.**

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

15.1.1. Requiring Contractor to stop work under Section 17;

15.1.2. Termination of this Contract under Section 16.2;

15.1.3. Withholding or offsetting payment for erroneous invoices for Services that Contractor is obligated but has failed to perform in accordance with this Contract, including warranties in Section 11;

15.1.4. Assessment of damages as a result of Contractor's failure to provide Deliverables and Services as and when required under a Statement of Work;

15.1.5. Exercise of its right of setoff;

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

15.1.7. The tax compliance remedies described in Section 18.

**15.2. Tax Compliance Remedies.** The Oregon Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing Contractor's compensation under this Contract or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

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

**15.4. Contractor's Remedies.** In the event Agency terminates this Contract as set forth in Section 16.1, or in the event Agency is in default under Section 14.2 and whether or

not Contractor elects to exercise its right to terminate the Contract under Section 16.3, Contractor's sole monetary remedy will be a claim for (i) any unpaid invoices for Deliverables completed, delivered and Accepted; and, (ii) for incomplete Deliverables an amount calculated by determining the percentage of Services completed for each unpaid Deliverable and applying that percentage to the fixed price for the Deliverable and any authorized expenses incurred. If previous amounts paid to Contractor exceed the amount due to Contractor under this section, Contractor shall pay any excess to Agency upon written demand.

## **16. TERMINATION.**

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

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

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

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

**16.2. Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract, in whole or in part, immediately upon written notice to Contractor of Contractor's default under Section 14.1.

**16.3. Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon Agency's default under Section 14.2.

**16.4. Mutual Termination.** The parties may agree to terminate this Contract upon at least thirty (30) Calendar Days' prior written agreement.

**16.5. Extension of Termination Date.** In addition to Agency's right to extend the term of the Contract under Section 7, Agency may extend the effective period of the Contract one or more times as it elects in its discretion, provided that the total of all such extensions does not exceed 180 (one hundred eighty) Calendar Days following the termination date in place immediately prior to the initial extension under this section. Agency will provide notice of an extension under this section to Contractor within 30 (thirty) Calendar Days of the then-scheduled Contract termination date.

**16.6. Disposition and Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property, which includes Agency's Confidential Information, including Agency Data, and any Deliverables for which Agency has made payment in whole or in part that are in the possession or under the control of Contractor in a format that is acceptable to Agency. Contractor shall also comply with the applicable provisions of Exhibit I with respect to Agency Data.

16.6.1. Any property or Deliverable returned or delivered to Agency pursuant to this section may be provided without the warranties set forth in Section 11.2, unless the Deliverable is Accepted.

16.6.2. Contractor shall maintain protections required by law or this Contract for any retained Agency property for so long as Contractor (including through any subcontractor) retains the property.

**17. STOP-WORK ORDER.** Agency may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work required by this Contract for a period of up to ninety (90) Calendar Days after the date of the notice, or for any further period to which the parties may agree. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the Stop Work Order notice. Within a period of ninety (90) Calendar Days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Agency will either:

**17.1.** Cancel or modify the Stop Work Order by a supplementary written notice; or

**17.2.** Terminate the work under Section 16.1, 16.2, or 16.4, Termination.

**17.3.** If the Stop Work Order is canceled or Agency issues a notice directing Contractor to resume Services, Agency may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete the Services and the related Deliverable price(s) by a duly executed amendment, inclusive of any ramp-up time required to for Contractor to resume Services. Any such Contractor request must be in the form of a Change Request under Section 7.1 and must be received by Agency within ten (10) Business Days of Agency's notice canceling the Stop Work Order or directing Contractor to resume Services.

## **18. COMPLIANCE WITH APPLICABLE LAW.**

**18.1. Compliance with Law Generally.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of



1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA); (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

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

**18.3. Tax Compliance.** Contractor certifies that it has complied with the tax laws of the State and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 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.

18.3.1. Any failure to comply with the provisions of this subsection 18.3 constitutes a material breach of this Contract. Further, any failure to comply with Contractor's

warranty in Section 11.1.8 also constitutes a material breach of this Contract. Any failure to comply entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

18.3.1.1. Termination of this Contract, in whole or in part;

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

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

18.3.2. This Contract will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing Contractor's compensation under this Contract or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

**18.4. Changes in Law Affecting Performance.** Each party will immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Contract. Each party shall monitor changes in federal and state laws, ordinances, and regulations applicable to its performance hereunder, and will be deemed aware of such changes within thirty (30) Calendar Days of the enactment of any such change.

## **19. DISPUTE RESOLUTION.**

**19.1. Litigation.** Any claim, action, suit, or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Contract be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is

sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.

**19.2. Governing Law.** This Contract is governed by, construed, and enforced in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

**20. ORDER OF PRECEDENCE.** This Contract consists of the following documents that are listed in descending order of precedence:

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

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

Exhibit B, Insurance;

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

Exhibit D, Contractor's Personnel / Authorized Representative / Key Persons; **and**

Exhibit E, Agency's Personnel / Authorized Representative.

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

**21. RECYCLING.** To the maximum extent economically feasible in the performance of the Contract Contractor shall use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**22. RECORDS MAINTENANCE AND ACCESS.** Contractor shall maintain all financial records and other records relating to its performance under this Contract in such a manner as to clearly document Contractor's performance. Financial records must be kept in accordance with generally accepted accounting principles. Contractor acknowledges and agrees that Agency, the Oregon Secretary of State, the federal government, and their duly authorized representatives will have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, and to related systems and tools (including hardware and software), to perform examinations and audits and make excerpts and transcripts, including system and data forensics. Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

**23. SURVIVAL.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 23, and provisions regarding Contract definitions, warranties and liabilities, independent contractor status and taxes and withholding, maximum compensation, ownership and license of intellectual property and Deliverables, Contractor's duties of confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, disposition and return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract for critical path Deliverables and all Milestones identified in a Statement of Work.

**25. FORCE MAJEURE.** Neither Agency nor Contractor will be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay is wholly or principally caused by unforeseen acts or events beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Both parties will make all reasonable efforts to remove or eliminate such a cause of delay or default and upon the cessation of the cause diligently pursue performance of their respective obligations under this Contract.

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

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

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

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

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

- 27. SEVERABILITY.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.
- 28. COUNTERPARTS.** This Contract may be executed in several counterparts, all of which when taken together constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed constitutes an original.
- 29. SUBCONTRACTS AND ASSIGNMENT.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract or assign or transfer any of its interest in this Contract without Agency's prior written consent, which will not unreasonably withheld. Agency consent to a subcontract or assignment does not relieve Contractor of any of its duties or obligations under this Contract.
- 29.1.** Any proposed use of a subcontractor which is located outside the United States must be called to the specific attention of Agency. All Services must be performed by staff physically located within the United States or its territories.
- 29.2.** The assignment of this Contract in whole or in part to a successor organization by merger or acquisition does not require the consent of the other party. Contractor is also permitted to assign its rights to payments without obtaining Agency's consent.
- 30. SUCCESSORS AND ASSIGNS.** The provisions of this Contract are binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.
- 31. INTENDED BENEFICIARIES.** The State of Oregon and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 32. WAIVER.** The failure of either party to enforce any provision of this Contract or the waiver of any violation or nonperformance of this Contract in one instance will not constitute a waiver by the party of that or any other provision nor will it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Contract will bind either party unless in writing and signed by both parties and, with respect to Agency's waiver or consent, all necessary State approvals have been obtained. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given.

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

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

**35. CERTIFICATION.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

**35.1.** Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding;

**35.2.** The individual signing on behalf of Contractor is authorized to act on Contractor's behalf, has authority and knowledge regarding Contractor's payment of taxes, and to the best of the signatory's knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation: i) Those tax laws listed in ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that apply to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; Contractor is an independent contractor as defined in ORS 670.600; and

**35.3.** The supplied Contractor tax identification numbers [below](#) are true and accurate.

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

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

**[CONTRACTOR], Contractor:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

**Oregon Secretary of State's Office:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

**LEGAL SUFFICIENCY APPROVAL:**

Not required per OAR 137-045-0050(18)

**EXHIBIT A**  
**STATEMENT OF WORK & REQUIREMENTS**

Each Statement of Work will be negotiated with the successful Proposer, and will reflect all required elements for the Services, agreed-upon Tasks and Deliverables, and the agreed-upon Services configuration and implementation methodology.



## **EXHIBIT B – INSURANCE**

### **INSURANCE**

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

#### **1. INSURANCE REQUIRED.**

##### **1.1 Workers' Compensation & Employers' Liability.**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and require and ensure that each of its out-of-state subcontractors complies with these requirements.

##### **1.2 Commercial General Liability.**

Contractor shall provide Commercial General Liability Insurance covering bodily injury, and property damage in a form and with coverage that are satisfactory to the State. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage, in each case arising out of Contractor's negligence, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$500,000 per occurrence and \$1,000,000 aggregate.

#### **2. EXCESS/UMBRELLA INSURANCE.**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

#### **3. ADDITIONAL INSURED.**

The Commercial General Liability, and Automobile Liability insurance required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations but only with respect to Contractor's activities under this Contract. The Additional Insured endorsement with respect to liability arising out of Contractor's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

#### **4. CONTINUOUS CLAIMS MADE COVERAGE.**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor 's completion and Agency's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

#### **5. CERTIFICATE(S) AND PROOF OF INSURANCE.**

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods or performing any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured as specified in this exhibit. If excess/umbrella 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 insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

#### **6. NOTICE OF CHANGE OR CANCELLATION.**

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

#### **7. INSURANCE REQUIREMENT REVIEW.**

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

**EXHIBIT C [RESERVED FOR SLA]**

## **EXHIBIT D CONTRACTOR'S PERSONNEL**

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

### **Authorized Representative:**

**Name and Title:**

**Phone:**

**Email:**

**Mailing Address:**

### **Project Manager:**

**Name and Title:**

**Phone:**

**Email:**

**Mailing Address:**

### **Other Key Persons:**

**Name and Title:**

**Phone:**

**Email:**

**Mailing Address:**

**EXHIBIT E**  
**AGENCY PERSONNEL**

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

**Authorized Representative:**

**Name and Title:**

**Phone:**

**Email:**

**Mailing Address:**

**Project Manager:**

**Name and Title:**

**Phone:**

**Email:**

**Mailing Address:**

**EXHIBIT F**  
**LICENSE FOR CONTRACTOR INTELLECTUAL PROPERTY**  
**[TBD or RESERVED]**

**EXHIBIT G**  
**LICENSE FOR THIRD PARTY INTELLECTUAL PROPERTY**  
**[TBD or RESERVED]**