

**STATE OF OREGON
ELECTRONIC RECORDS MANAGEMENT SYSTEM
PRICE AND SERVICES AGREEMENT # _____**

RECITALS

- A. The State of Oregon, acting by and through DAS (defined below) desires to engage Contractor (defined below) to provide a Price Agreement for Products and Services to enable DAS to achieve specific business and State of Oregon mission objectives.
- B. Contractor is a successful Proposer in connection with the RFP # 102-1328-08.
- C. Contractor desires to provide Products and perform the Services for the State of Oregon and its Authorized Purchasers.

This Electronic Records Management System Price and Services Agreement (this "Agreement") is entered into on the date of execution by and between the State of Oregon acting by and through its Department of Administrative Services State Procurement Office ("DAS"), and _____("Contractor") for the purpose of:

- (1) identifying the form of Work Order to be used;
- (2) identifying the terms and conditions applicable to subsequent contracts entered into between Authorized Purchasers and Contractor pursuant to which Contractor will render Software and Services to Authorized Purchasers; and
- (3) the process through which the contracts will be created.

Authorized Purchasers and Contractor intend to enter into binding and enforceable contracts for Products, Services or both by execution of a work order substantially in the form attached hereto as Attachment A that specify the goods to be delivered, the work to be performed and makes the standard terms and conditions set forth in Attachment A attached hereto applicable to the Product and Services. Each such work order so executed shall create a separate contract between the Authorized Purchaser and Contractor (consisting of the work order, together with the standard terms and conditions) ("Work Order Contract(s)") enforceable in accordance with the terms thereof and independent of all other such Work Order Contracts. The scope of such Work Order Contracts is provided in the RFP to this Price Agreement.

The Authorized Purchaser will coordinate directly with the Contractor for execution of the Work Order Contract for the required Services, Products or both. Authorized Purchasers are responsible for selecting and contracting with Contractor in accordance with the process described above and the process outlined in the RFP to this Price Agreement. ORCPP Participants are responsible for selecting and contracting with Contractors in all categories in accordance with the above-described process as well as in accordance with the participant's own statutes, rules and policies.

DEFINITIONS:

Authorized Purchaser means the State of Oregon acting by and through the Department of Administrative Services, and Authorized Agencies submitting Work Order Contracts pursuant to DAS purchasing authority and direction and Independent Agencies submitting Work Order Contracts pursuant to their independent purchasing authority. Authorized Purchasers also include ORCPP Participants with appropriate purchasing authority under their applicable statutes, rules, regulations or ordinances that submit Work Order Contracts to Contractor. For the purchase of Products, "Authorized Purchaser" is synonymous with "Buyer" as used in ORS chapter 12.

Contractor means a successful Proposer in connection with RFP # 102-1328-08 and a party to Price Agreement # 9973. **"Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous.**

COTS Software means the commercial off-the-shelf software and Supplemental Equipment Contractor is to provide to Authorized Purchasers pursuant to Work Order Contracts.

Deliverables means all items that Contractor is required to deliver to Authorized Purchaser under the Work Order Contract, including Developments as defined in the Work Order Contract, section C.

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

Independent Agencies means those State Agencies with independent procurement authority pursuant to ORS 279A.025, ORS 279A.050 and other provisions of applicable State law.

ORCPP Participant means members of the Oregon Cooperative Purchasing Program (ORCPP) who have entered into an intergovernmental agreement with DAS to use DAS' contracts. Participants may include but are not limited to: cities, counties, school districts, special districts, Qualified Rehabilitation Facilities (QRF's), residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, American Indian tribes or agencies, and quasi-State Agencies such as Oregon University System, Oregon Health Sciences University, and Oregon State Lottery, with statutory authority or autonomy to solicit for services independently. A listing of current ORCPP Participants is found at <http://www.oregon.gov/DAS/SSD/SPO/coop-menu.shtml>

ORPIN means the Oregon Procurement Information Network which is the State of Oregon's automated procurement system and can be found at <http://orpin.oregon.gov/open.dll/welcome>.

Participants mean members of ORCPP.

Product(s) means the Electronic Records Management System Software Contractor will provide to Authorized Purchasers under the Contract. The Product and Price List is attached hereto in Attachment C, which DAS and Contractor may periodically adjust according to the processes reflected in Section 3, Contractor Prices and Rates, and as thereafter reflected in Change Orders.

Proposal means Contractor's written offer submitted in response to the RFP, including all necessary attachments, that is attached hereto as Attachment E.

RFP means the entire solicitation document, including all Addenda, appendices, attachments, exhibits, parts and sections, attached hereto as Attachment D.

Services means pre-software implementation services (such as software solutions consulting and design), project management, requirements gathering, installation, configuration, customization, data migration, training, integration to infrastructure, maintenance and support, and updates that Contractor will provide to Authorized Purchasers under the Contract as outlined in the RFP, Section 3.4.7.

Statement of Work means all Services required to be performed under a Work Order Contract and includes, without limitation, delivery schedules, a description of the Services, and other terms specifically related to performance of the Services.

Supplemental Equipment means minor ancillary items required to use the software. It does not mean CPUs, servers, monitors, input devices or comparable items that are available for acquisition by Authorized Purchasers on existing State contracts or price agreements.

Written or **Writing** means conventional paper documents, whether hand written, manuscript or printed, in contrast to spoken words. It also includes facsimile documents or electronic transmissions to the extent permitted by the solicitation document or contract.

Work Order Contract means the documents submitted to Contractor for the purchase of Products, Services or both, that are attached hereto as Attachment A.

PRICE AGREEMENT TERMS AND CONDITIONS

1. **TERM OF PRICE AGREEMENT:** The initial term of the Price Agreement shall be two (2) years, beginning on the Effective Date. Upon concurrence of the parties, the Price Agreement may be extended for additional terms ("Extension Terms"). Provided, however, that the maximum duration of the Price Agreement, including all extensions, shall be ten (10) years. DAS reserves the right to renegotiate price.

2. **EXTENSIONS:** DAS shall notify Contractor in writing of the DAS' intent to extend the Price Agreement ("Renewal Notice") at least thirty (30) calendar days prior to the expiration of the then-current term. If Contractor and DAS agree in writing to extend the term of the Price Agreement, then the Price Agreement shall be extended for the next Extension Term. If parties elect to extend the Price Agreement, the terms and conditions and pricing of the Price Agreement shall remain the same during any such Extension Term(s), unless DAS and the Contractor agree on different rates pursuant to 3.2 below.

3. **CONTRACTOR PRICES AND RATES:** Subject to any retention amounts, invoice requirements and discounts off the maximum hourly rates, Authorized Purchaser will compensate Contractor for accepted Products or Services, or both, based upon the applicable prices and rates as reflected in Attachment C to the Price Agreement, the Products and Prices List. The Products and Prices List is comprised of Product and Services line items, maximum hourly rates, guaranteed minimum discounts, and discounted prices. Authorized Purchaser may compensate Contractor on a deliverables based payment schedule. Authorized Purchaser may receive discounted hourly rates below the maximum hourly rates. DAS and Contractor may periodically adjust prices and rates according to this Price Agreement. DAS and Contractor may also agree to prices for particular Work Orders based upon pricing methods as reflected in Section 3.1, below, Price Guarantee.

3.1 **PRICE GUARANTEE.** Contractor warrants that it shall use its best efforts to extend best available pricing to the State of Oregon for Electronic Records Management System Products and Services covered by this Agreement, as compared to Contractor's other customers in the Pacific Northwest area who provide Contractor with comparable potential for business volume for like Products and Services implicated under this Agreement, subject to any of Contractor's pricing obligations under its established state government programs, if any, and to the federal government. Contractor will utilize all accessible and applicable business partner programs and pricing mechanisms in order to optimize pricing and terms on behalf of the State, including without limitation other pricing methods sanctioned by Contractor for the benefit of its state government clients, e.g., the Western States Contracting Alliance (WSCA).

3.2 **PRICE PROTECTION / ADJUSTMENTS.** Authorized Purchaser will not pay any additional costs above those costs provided for in the Price Agreement. With respect to particular purchases of Products or Services, or both, that are the subject of a Work Order Contract, the price shall be the price or rate in Attachment C, Products and Services List, or the price shall be the lower

price agreed to between Authorized Purchaser and Contractor as set forth in a Work Order Contract. If the Work Order Contract sets forth a lower price than the given fixed price identified in Contractor's quote to the Authorized Purchaser or applicable maximum hourly billing rate identified in Attachment C, then the Work Order Contract shall bind the Contractor. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Work Order Contract period by reason of market change will be passed on to Authorized Purchaser by reduction in the applicable prices and maximum hourly billing rates identified in Attachment C. This decrease will be effective on the date the price decrease is announced to the general public.

4. EFFECT OF EXPIRATION OR TERMINATION; TRANSITION UPON TERMINATION OR EXPIRATION OF WORK ORDER CONTRACT.

4.1 Upon termination or expiration of the Price Agreement, at the request of any Authorized Purchaser, Contractor shall continue to provide the Products and Services and meet its obligations under any applicable Work Order Contract issued prior to expiration or termination of the Price Agreement unless such Work Order Contract is otherwise terminated pursuant to the terms and conditions of the Work Order Contract. If Contractor provides any Authorized Purchaser with Products or Services under an existing Work Order Contract during a period following the termination or expiration of the Price Agreement, the terms and conditions and pricing of such Work Order Contract shall remain in effect, including reporting requirements.

4.2 The expiration or termination of the Price Agreement shall be without prejudice to the rights of the parties accrued up to the date of such expiration or termination.

5. PRODUCTS AND SERVICES TO BE FURNISHED: During the term of the Price Agreement, Contractor agrees to provide all Products and Services ordered by Authorized Purchasers in accordance with the terms and conditions of the Price Agreement and the applicable Work Order Contract. Contractor shall ensure the Products are Department of Defense (DoD) 5015.2 or 5015.02 certified at the time each Work Order Contract is executed. Contractor shall use best efforts to maintain current DoD 5015.2 or 5015.02 certification during the terms of the Price Agreement and Work Order Contracts. If at any time Contractor's Products are not DoD 5015.2 or 5015.02 certified Contractor shall not accept new Work Orders from Authorized Purchasers unless an Authorized Purchaser has an existing Work Order Contract with Contractor. Each Work Order Contract will include its own specific Statement of Work. **Individual Work Order Contracts that exceed \$100,000 may require the Attorney General's legal sufficiency approval.**

6. WORK ORDER CONTRACTS: Contractor shall not accept any Work Order Contract that does not comply with the following requirements:

6.1 AUTHORIZED PURCHASERS: The Authorized Purchasers will use the Work Order Contract form set forth herein as Attachment A to order Products, Services or both, under the Price Agreement unless otherwise authorized by DAS. No language in a Work Order Contract submitted shall vary, amend, modify, or add terms or conditions to the Price Agreement. Negotiable provisions in Work Orders shall be limited to: designation of Authorized Purchaser and its authorized representative; Contractor key personnel, itemization of Products and Services (offered under the terms of the Price Agreement) ordered; payment retention amounts, statement of work for Services, delivery schedules in accordance with the terms of the Price Agreement; deliverables based payment schedules; warranty period length; applicability statements for the following Work Order Contract exhibits: (a) license for COTS Software, (b) hosting agreement, (c) maintenance and support agreement, (d) escrow agreement, (e) provisions required by federal law, and (f) laws and regulations specific to the Authorized Purchaser and applicable to the Work Order Contract; the exhibit specifying the laws and regulations specific to the Authorized Purchaser and applicable to the Work

Order Contract; the exhibit specifying the hosting agreement to the Work Order Contract; location at which Contractor will perform Services and invoicing address.

6.2 MANDATORY WORK ORDER CONTRACT LANGUAGE:

THIS WORK ORDER CONTRACT IS PLACED AGAINST STATE OF OREGON SOLICITATION # 102-1328-08 AND PRICE AGREEMENT # 102-1328-08. THE WORK ORDER CONTRACT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT APPLY TO THIS PURCHASE AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

7. SALES TO UNAUTHORIZED PURCHASERS: It is the Contractor's responsibility to verify purchasers' authority to contract pursuant to the Price Agreement. If Contractor is found to have entered into two or more Contracts under this Price Agreement with an entity other than an Authorized Purchaser, Contractor will be deemed to be in material breach of the Price Agreement.

8. LIABILITY OF AUTHORIZED PURCHASERS: Contractor acknowledges and agrees that each Authorized Purchaser shall bear the liability on Work Order Contracts entered into for purchases by the respective Authorized Purchaser. Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Products and Services and the resulting contractual relationship, if any, with each such contracting party.

9. INDEMNIFICATION: Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property 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 and resulting Work Order Contracts, including but not limited to (1) the activities of Contractor or its officers, employees, subcontractors, or agents, and (2) the Products and Services provided, except that Contractor shall have no obligation to indemnify the State of Oregon and its officers, employees and agents from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of the state and its officers, employees or agents.

9.1 Provided, however, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State of Oregon or its officers, employees and agents prior to such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may at its election and expense 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.

10. INSURANCE.

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

10.2 Professional Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Price Agreement, professional liability insurance with a per claim limit of not less than \$10,000,000 and in the annual aggregate. Full limits can be obtained by the purchase of one policy or a primary and excess policy as needed to provide the full policy limits. Such policy or policies shall include coverage for losses arising from the breach of information security or cyber liability (including technology errors and omissions, security and privacy liability, and media liability), whether combined with the professional liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage caused by error, omission, or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Price Agreement or a Work Order Contract. The policy shall be amended to include independent contractors providing professional services on behalf of or at the direction of Contractor. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, and privacy policy.

10.3 General Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Price Agreement and Work Order Contracts, general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000, for each occurrence for Bodily Injury and Property Damage and not less than \$4,000,000 aggregate. It shall include contractual liability coverage for the indemnity provided under this Price Agreement and Work Order Contracts.

10.4 Automobile Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Price Agreement and Work Order Contracts, automobile liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 or the amount required under the Oregon Financial Responsibility Law (ORS 806.060 through ORS 806.115), whichever is greater, for each accident for bodily injury and property damage, including coverage for the business use of owned, hired or non-owned vehicles, as applicable.

10.5 Additional Insureds. Each of the insurance policies that Contractor obtains pursuant to this Article X shall provide that the State of Oregon, Authorized Purchaser and their divisions, officers and employees are additional insureds under the policy, but only with respect to the Services that Contractor will provide under this Price Agreement and Work Order Contracts. This section 10.5 does not apply to the technology errors and omissions insurance required in section 10.2 or Worker's Compensation in section 10.1.

10.6 Umbrella Policy. Contractor shall obtain umbrella insurance coverage in excess of the primary policies with a limit of loss of at least \$4,000,000 per occurrence.

10.7 Tail Coverage. If any of Contractor's liability coverages are written on a "Claims Made" basis, Contractor shall provide tail coverage for a period of 24 months.

10.8 Primary and Non-contributory. Contractor shall ensure its insurance is primary and non-contributory as respects any other insurance or self-insurance.

10.9 Waiver of Subrogation. Contractor shall ensure its underwriters waive their rights of subrogation against the State of Oregon.

10.10 Indemnity. The types and amounts of insurance requested in this section 10 do not limit or otherwise affect the Contractor's obligations in section 9.

10.11 Notice of Cancellation or Change. Contractor shall not cancel, reduce its limits for, omit or intend not to renew, or otherwise cause a material change to the insurance coverage required under this Price Agreement without the Contractor using best efforts to provide thirty (30) calendar days' prior written notice from Contractor or its insurers to DAS, and Authorized Purchasers who

have a Work Order Contract with Contractor. In no event will the Contractor provide less than 10 calendar days' prior written notice.

10.12 Certificates of Insurance. As evidence of the insurance coverage required under this Price Agreement, Contractor shall furnish acceptable insurance certificates to DAS upon execution of the Price Agreement and to Authorized Purchasers before commencing the Services and annually thereafter. The certificates shall specify all of the parties who are additional insureds, and Contractor disclose to DAS or Authorized Purchaser upon their request all deductible amounts or retentions for all self-insurance. Insuring companies shall be authorized to sell insurance in the State of Oregon. Contractor shall be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance.

11. TERMINATION OF PRICE AGREEMENT:

11.1 The Price Agreement may be terminated at any time by mutual written consent of Contractor and DAS, or DAS may terminate the Price Agreement for convenience upon thirty (30) days' notice.

11.2 DAS may terminate the Price Agreement immediately upon notice to Contractor, or after expiration of the cure period provided below, or at such later date as it may establish in such notice, upon the occurrence of either of the following events: (i) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the purchase of Goods or Services or both offered under the Price Agreement is prohibited; or (ii) Contractor breaches any material provision of the Price Agreement entered into there under and such breach is not cured within fifteen (15) days of the date of the written notice of such breach to Contractor; or (iii) Contractor breaches any material provision of a Work Order Contract entered into there under, and such breach is not cured within the cure period specified in the Work Order Contract."

11.3 Contractor may terminate the Price Agreement if DAS breaches any material provision of the Price Agreement, and such breach is not cured within fifteen (15) days of the date of the written notice of such breach provided to DAS.

11.4 Upon receipt of written notice of termination, Contractor shall stop entering into any new Work Order Contracts under the Price Agreement as directed by DAS.

12. REMEDIES: In addition to any other remedies provided in this Price Agreement including any rights of termination, the following remedies are available for a breach of a material provision of the Price Agreement:

12.1 DAS REMEDIES: In the event Contractor is in breach of any material obligation of this Price Agreement, Contractor shall be liable for any direct damages arising out of or related to the breach.

12.2 CONTRACTOR'S REMEDIES. In the event DAS terminates this Price Agreement for convenience, or in the event that DAS is in breach of a material obligation under this Price Agreement or any Work Order Contract entered into there under, Contractor's sole monetary remedy shall be the total fees earned for Services, Deliverables and goods provided to and accepted by Authorized Purchasers under applicable Work Order Contracts. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

12.3 No party shall be liable for any indirect, incidental, consequential, punitive or special damages, arising out of or related to this price agreement or contracts entered into under the price agreement, including, without limitation, damages for loss of business profits, business interruption,

loss of business information, and the like, even if the party has been advised of the possibility of such damages. This section shall not apply to any party's (a) ability to obtain injunctive or other equitable relief; and (b) indemnification obligations under section 9. Nothing in this Price Agreement and a Work Order Contract shall limit Contractor's liability with respect to death or personal injury caused by or arising from Contractor's negligence or willful misconduct.

13. NOTICES: All notices required to be given by Contractor under the Price Agreement shall be in writing and addressed to the DAS Authorized Representative identified in Exhibit D. All notices required to be given by DAS shall be in writing, addressed to the Contractor's representative identified in Exhibit C, and sent to the address specified in the Proposal. Mailed notices shall be deemed given five (5) calendar days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices shall be deemed given upon electronic confirmation of successful transmission to the designated fax number.

14. ACCESS TO RECORDS: Contractor shall maintain all fiscal records relating to the Price Agreement in accordance with generally-accepted accounting principles, and shall maintain all other records relevant to Contractor's performance of the Price Agreement (collectively, "Records"). The Authorized Purchaser and its duly authorized representatives shall have access to Records for purposes of examination and copying. Contractor shall retain and keep accessible all Records for a minimum of three (3) years, or such longer period as may be required by applicable law following expiration or termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price Agreement, whichever date is later.

15. PRICE AGREEMENT ADMINISTRATION

15.1 AUTHORIZED PURCHASER CONTRACTOR ENGAGEMENT: As outlined in the RFP, section 7.11, DAS will instruct Authorized Purchasers to use the best value analysis procedures or, if the Authorized Purchaser is not subject to DAS procurement authority, the Authorized Purchaser's own statutes, rules and policies to engage the Contractor. Contractor shall cooperate in good faith with the DAS in finalizing and implementing the best value analysis procedures and with Authorized Purchaser during the Authorized Purchaser's selection process.

15.2 VENDOR COLLECTED ADMINISTRATION FEE (VCAF): As provided in this Price Agreement, Section 22.1.10, DAS may establish a VCAF in compliance with DAS's VCAF policy. If the fee is adopted, Contractor will be given an opportunity to change their pricing to reflect the additional fee. For more information about VCAF, refer to the "Vendor Collected Administrative Fee Information" document in the RFP.

15.3 ACCOUNTING AND REQUIRED REPORTS: Regardless of whether DAS establishes a VCAF, Contractor shall submit a Volume Sales Report (VSR) not later than thirty (30) days after the end of each calendar quarter, which contains: (i) complete and accurate details of the net sales for the relevant quarterly period and (ii) such other information as DAS may informally request. Contractor shall send a volume sales report each quarter, whether or not there are net sales, to DAS. For the purposes of this Price Agreement, quarters end March 31, June 30, September 30, and December 31.

15.3.1 VOLUME SALES REPORT (VSR) INFORMATION. Contractor shall provide the following information on the VSR: For each Authorized Purchaser, listed separately, Contractor shall provide: (1) Customer name, Contractor shall separately identify State agencies and ORCPP members, include total dollar volume of goods and services sold to each Authorized Purchaser; (2) Work Order number, Order Document; (3) Date ordered; (4) Quantity ordered: (a) Price list items, or (b) Hours for type of service; (5) Unit price and extended total; and (6) Total Dollar Amount for ending Quarter.

15.3.2 VOLUME SALES REPORT FORMAT: Contractor shall provide VSRs in a format approved by both parties. VSRs by e-mail are preferred; however, hardcopy reports are acceptable. The following format examples are preferred for VSR: Excel spreadsheet or Lotus spreadsheet. All other report formats must be approved and agreed upon by DAS and Contractor prior to submission of the first report.

15.3.3 REPORT RECEIPT AND ACCEPTANCE: Contractor shall send VSRs to the Authorized Representative identified in Exhibit D to the Price Agreement (DAS Personnel), at the mail or email address identified in Exhibit D to the Price Agreement. DAS's receipt or acceptance of any of the reports furnished pursuant to this Price Agreement, or any sums paid hereunder, does not preclude DAS from challenging the validity thereof at any time.

16. ENVIRONMENTAL RESPONSIBILITY

16.1 STATEWIDE E-WASTE/RECOVERY POLICY: If applicable, Contractor shall compose the technical requirements to comply with DAS's Statewide E-Waste/Recovery Policy, effective January 1, 2007. This policy may be found at <http://www.oregonsurplus.com/DAS/SSD/SURPLS/docs/107-009-0050.pdf>.

16.2 RECYCLING: Contractor shall, to the maximum extent economically feasible in the performance of the 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 plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

17. SEVERABILITY: If any provision of the Price Agreement is declared by a court of competent jurisdiction to be illegal, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Price Agreement did not contain the particular provision held to be invalid.

18. SURVIVAL: Termination of the Price Agreement shall not extinguish or prejudice the DAS's right to enforce the warranty, access to records, indemnification, governing law, venue, consent to jurisdiction, and remedies provisions.

19. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Neither Contractor nor DAS shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under the Price Agreement except as expressly permitted by this Price Agreement, in whole or in part, without the prior written approval of the other party. Further, no express approval in this Price Agreement or other such written approval shall relieve Contractor of any obligations under the Price Agreement and Work Order Contract, and any delegate shall be considered the agent of Contractor. The provisions of each Work Order Contract shall be binding upon and shall inure to the benefit of the parties to the Work Order Contract and their respective successors and permitted assigns.

20. GOVERNING LAW: The Price Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without regard to principles of conflicts of law.

21. VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between the DAS and Contractor that arises from or relates to the Price Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY SUBMITTAL OF ITS SIGNED PROPOSAL, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of the State's sovereign or

governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

22. MERGER CLAUSE; AMENDMENT; WAIVER: The Price Agreement constitutes the entire agreement between the Contractor and the DAS on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Price Agreement. No waiver, consent, modification or change of terms of the Price Agreement (collectively, "Amendment") shall be binding upon either party to: (a) the Price Agreement or (b) Contracts entered into thereunder, unless such Amendment is in writing, is signed by both parties to the Price Agreement, and all necessary approvals have been obtained. Amendments shall be effective only in the specific instance and for the specific purpose given. No amendment shall be effective until all requisite signatures and approvals are obtained. Emails with a typed name or signature block do not amount to a fully executed Amendment. The failure of DAS to enforce any provision of the Price Agreement shall not constitute a waiver by DAS of that or any other provision.

22.1 ANTICIPATED AMENDMENTS. The parties have determined that during the term of the Price Agreement or a Work Order Contract, the parties may need to modify selected terms, conditions, price(s) and types of products and services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

22.1.1 Amendments to change the licensing structure from per seat licensing to an Enterprise (as defined in the RFP) license;

22.1.2 Amendments to change the level of technical support, hosting or escrow services offered under the Price Agreement or purchased by Authorized Purchaser;

22.1.3 Amendments required as a result of innovations in technology, hardware, and software that are within the overall scope of Services described in the Price and Services Agreement and that would benefit the State and Authorized Purchasers;

22.1.4 Amendments required as a result of necessary changes in the State's business process that may restructure DAS, Authorized Purchaser, or the Enterprise;

22.1.5 Amendments required as a result of changes in user applications that require additional upgrades which are not required by the Software initially provided under the Price and Services Agreement;

22.1.6 Amendments to add, delete, or otherwise modify Products or Services, or both, within the scope of the RFP and the Price and Services Agreement;

22.1.7 Amendments to extend the term of the Price and Services Agreement;

22.1.8 Amendments to change pricing;

22.1.9 Amendments to change the length of the default warranty period;

22.1.10 Amendments to add a Vendor Collected Administrative Fee (VCAF);

22.1.11 Amendments required as a result of changes in applicable federal and State law;

22.1.12 Amendments to change the contract administration of the Price Agreement, or Work Order Contracts.

23. CHANGE CONTROL PROCEDURES

23.1 WRITTEN CHANGE REQUESTS. Either DAS or Contractor may request a change to this Price Agreement, including all Attachments or Exhibits hereto, by submitting a written change request describing the change requested. DAS' and Contractors' Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

23.2 ANALYSIS OF CHANGE REQUESTS; CHANGE ORDERS. The party to whom the written change request has been submitted, if it has not been rejected pursuant to Section 22.1, shall analyze such change request to determine the effect that the implementation of the change will have on the Price Agreement and Work Order Contracts. If any change is approved, the party that submitted the request for the change shall prepare a written change order, detailing all modifications to the scope, Services, Products, price, or other terms (the "Change Order"). A Change Order at a minimum shall contain the following information:

23.2.1 The date of issuance of the Change Order;

23.2.2 A detailed description of the modifications to Products, Services or pricing, under the Change Order;

A Change Order shall alter only that portion of the Price Agreement to which it expressly relates and shall not otherwise affect the terms and conditions of this Price Agreement and apply only to future resulting Work Order Contracts. Both parties must sign the Change Order to authorize the changes into this Price Agreement. No Services shall 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 approved as set forth in Section 21. The following activities or transactions may be effected by the parties through a Change Order without resort to the Amendment process: Substituting key persons.

24. ORDER OF PRECEDENCE. This Price Agreement consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Price Agreement, less its Attachments and Exhibits; (b) the Work Order Contract terms and conditions Attachment A, less its Exhibits; (c) the Product and Price List Attachment C; (d) the RFP, Attachment D; (e) Contractor's Proposal, Attachment E; (f) the Price Agreement Exhibits; and (g) the Work Order Contract Exhibits. The aforementioned Attachments and Exhibits are by this reference incorporated in the Price Agreement.

CONTRACTOR: _____

Authorized Signature: _____

Title: _____

Date: _____

Telephone number: _____ Facsimile number: _____

(signatures continued on next page)

**STATE OF OREGON BY AND THROUGH ITS
DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)**

Authorized Signature: _____

Title: _____

Date: _____

Telephone Number: _____ Facsimile Number: _____

DEPARTMENT OF JUSTICE LEGAL SUFFICIENCY REVIEW AND APPROVAL

(This approval is limited to this Price Agreement. Work Order Contracts requiring legal sufficiency approval must receive separate approval from the Department of Justice.)

Authorized Signature: _____

Title: _____

Date: _____

EXHIBIT A
to the Prices and Services Agreement

CONTRACTOR DATA AND TAX CERTIFICATION

By signature on this Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

Federal Tax Number _____

Oregon Tax Number _____

Contractor Signature _____ Date _____

EXHIBIT B
to the Prices and Services Agreement

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

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following:)**
 - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
 - C. Telephone listing is used for the business that is separate from the personal residence listing.
 - D. Labor or services are performed only pursuant to written contracts.
 - E. Labor or services are performed for two or more different persons within a period of one year.
 - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

(DAS completes B below when Contractor completes Section A above.)

B. AGENCY APPROVAL.

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

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

DAS Signature _____ Date _____

(DAS' certification is solely for DAS' benefit and internal use)

EXHIBIT C
to the Prices and Services Agreement

CONTRACTOR'S PERSONNEL

Authorized Representative:

Other Key Persons:

EXHIBIT D
to the Prices and Services Agreement

DAS PERSONNEL

Authorized Representative:

Lena Ferris

State Procurement Analyst
DAS State Procurement Office
1225 Ferry Street U140
Salem, OR 97301-4285
Office: 503-378-3001
FAX: 503-373-1626
[lena.ferris@state.or.us](mailto:lana.ferris@state.or.us)

ATTACHMENT A
to the Prices and Services Agreement

WORK ORDER

WORK ORDER CONTRACT TERMS AND CONDITIONS
FOR PRICE AGREEMENT # _____

Work Order No. _____ Contract # _____
Issuer: _____

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

RECITALS

- A. Authorized Purchaser desires to engage Contractor to provide Products, Services or both to enable Authorized Purchaser to achieve specific business and governing entity mission objectives.
- B. Contractor is a successful Proposer in connection with the RFP # 102-1328-08, and has a Price Agreement with the State of Oregon by and through its Department of Administrative Services.
- C. Contractor desires to provide Products, perform the Services or both for the State of Oregon and Authorized Purchasers.

[Note: Sections A and D of this Work Order Contract apply to all purchases. Depending upon the type of purchase, either Section B or Section C applies. Section B applies if: (a) only software is purchased, (b) only maintenance services are purchased, or (c) software and maintenance services only (no other services) are purchased. Section C applies if: (a) only services are purchased (other than only maintenance services), or (b) software and services are purchased.]

Authorized Purchaser and Contractor agree as follows:

Section A. General Work Order Terms and Conditions

- 1. THIS WORK ORDER IS PLACED AGAINST STATE OF OREGON SOLICITATION # _____ AND PRICE AGREEMENT #102-1328-08. THE WORK ORDER TERMS AND CONDITIONS CONTAINED IN THE PRICE AGREEMENT APPLY TO THIS PURCHASE AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.
- 2. This Work Order hereby incorporates by reference all of the terms and conditions contained in Price Agreement # _____ between the State of Oregon, acting by and through its Oregon Department of Administrative Services, and Contractor.
- 3. This Work Order is effective on the date (“Work Order Contract Effective Date”) this Work Order Contract is fully executed and approved by Contractor and the Agency Authorized Representative in accordance with applicable laws, rules, and regulations, including any required approval by the Department of Administrative Services and the Department of Justice.
- 4. Term. This Work Order shall expire on _____, unless an Amendment is issued to extend the time, as authorized by and pursuant to provisions of the Price Agreement or Work Order. Unless

otherwise specified for a particular Deliverable, Contractor shall complete all Services and Deliverables required under this Work Order on or before _____.

5. Definitions. All defined terms not otherwise defined herein have the meaning set forth in the Price Agreement.

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

“Contractor Intellectual Property” means all contractor intellectual property developed independently from the Services including foreign and domestic intellectual property rights, both statutory and common law rights if applicable and including; (a) all trademarks, service marks, trade names, domain names, registrations and applications for registrations for the foregoing; (b) patents, pending patent applications, and patents subsequently issuing from patent applications; (c) copyrights and registrations and applications for registrations thereof; and (d) Contractor confidential information, trade secrets, and know how.

“COTS Software” means commercial off-the-shelf software that Contractor delivers to Authorized Purchaser pursuant to the Statement of Work; this definition also includes Supplemental Equipment.

“Developments” means 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 registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor (either alone or with others) pursuant to the Work Order Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Developments shall not include any COTS Software, Third Party Intellectual Property or Contractor Intellectual Property.

“Documentation” means all documents, including documents that are Deliverables described in the Statement of Work and includes, but is not limited to, any and all operator’s and user’s manuals, training materials, guides, commentary, listings and other materials for use in conjunction with and for the operation of the System and its components that are to be delivered by Contractor under this Work Order Contract.

“Work Order Contract” means the entire written agreement between the parties, including but not limited to the Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; the Work Order and Price Agreement documents and exhibits to the Work Order and Price Agreement.

6. OWNERSHIP AND LICENSE IN DELIVERABLES.

6.1 Original Works.

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

6.2. Contractor Intellectual Property. If intellectual property rights in the Development are Contractor Intellectual Property, Contractor hereby grants to Authorized Purchaser an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the

Contractor Intellectual Property, and to authorize others to do the same on Authorized Purchaser's behalf, to fulfill the business objectives identified in this Work Order Contract and the Prices and Services Agreement.

6.3. Third Party Intellectual Property. To the extent Contractor has the authority, Contractor shall sublicense or pass through to Authorized Purchaser, and the ability for Authorized Purchaser to sublicense or pass through to others authorized on Authorized Purchaser's behalf, all Third Party Intellectual Property licenses to fulfill the business objectives identified in this Work Order Contract and the Prices and Services Agreement. Contractor represents and warrants that it has provided written disclosure to Authorized Purchaser of all Third Party Intellectual Property that must be independently licensed by Authorized Purchaser to fully enjoy the benefit of the Development. In the event Contractor failed to provide such written disclosure, Contractor shall secure on the Authorized Purchaser's behalf and in the name of the Authorized Purchaser, an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Authorized Purchaser's behalf, to fulfill the business objectives identified in this Work Order Contract and the Prices and Services Agreement.

6.4. Open Source Approval and Notice. Any Open Source Elements in the Development must be approved in advance and in writing by Authorized Purchaser. If Authorized Purchaser approves the use of Open Source Elements, Contractor shall:

- a. Notify Authorized Purchaser in writing that the Development contains Open Source Elements;
- b. Identify the specific portion of the Development that contain Open Source Elements; and
- c. Provide a copy of the applicable license for each Open Source Element to Authorized Purchaser.

6.5 COTS Software. Authorized Purchaser rights in the COTS Software shall be as set forth in the end user license agreements between Authorized Purchaser and the Licensor of such COTS Software, which are attached hereto as Exhibit F.

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

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

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

6.9 Competing Services. Subject to the provisions of this Section A.6, and Contractor's obligations with respect to Confidential Information, as defined in Section A.7, nothing in this Work Order Contract shall preclude or limit in any way the right of Contractor to: (i) provide the services similar to those contemplated in this Work Order Contract, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables. Each party shall be free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Work Order Contract free of any use restriction or payment obligation to the other.

6.10 License to Developments. Authorized Purchaser irrevocably grants to Contractor a perpetual, worldwide, fully paid up, nonexclusive right and license to copy, prepare derivative works based on, deliver, publish, perform, display, dispose of, modify, improve, use and sublicense the Developments; provided that such license is at all times subject and subordinate to the confidentiality and nondisclosure provisions of this Work Order Contract.

7. CONFIDENTIALITY AND NON-DISCLOSURE.

7.1 Confidential Information. Each party acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this Work Order Contract, be exposed to or acquire information that is confidential to the other party or the other party's clients. Confidential information ("Confidential Information") is (1) information clearly marked confidential, or identified as confidential in a separate writing as confidential, provided by a party or its employees or agents in the performance of this Work Order Contract, (2) any and all information of any form containing Personal Information as defined below and provided to Contractor by Authorized Purchaser or its employees or agents in the performance of this Work Order Contract, and (3) information provided by a party, or its employees or agents, normally considered confidential in the ordinary course of business. Any reports or other documents or items (including software) which result from the use of the Confidential Information by the recipient of such information shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document; (b) is furnished by the party disclosing such information to others without restrictions similar to those imposed by this Work Order Contract; (c) is rightfully in the receiving party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Work Order Contract; (d) is obtained from a source other than the discloser without the obligation of confidentiality, (e) is disclosed with the written consent of the disclosing party, or; (f) is independently developed by employees or agents of the receiving party who can be shown to have had no access to the Confidential Information.

7.2 Non-disclosure. The recipient of Confidential Information agrees to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than as contemplated by this Work Order Contract or reasonably related thereto, including without limitation the use by Authorized Purchaser of contractors who need to access or use the system for any valid business purpose, and to advise each of its employees and contractors of their obligations to keep Confidential Information confidential.

Each party shall use commercially reasonable efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other immediately in the event it 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 Work Order Contract and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.

Each party agrees that, except as provided in this Work Order Contract or directed by the other, it will not at any time during or after the term of this Work Order Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Work Order Contract each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.

7.2.2 Personal Information. In the performance of the Work Order Contract or the Prices and Services Agreement, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11), including Social Security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have in place, a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628. Accordingly, Contractor agrees and warrants that it will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to

which Contractor receives access, possession, custody or control. Contractor shall provide Authorized Purchaser with written security policies describing the steps Contractor will take to preserve Personal Information.

1. Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Work Order Contract or the Prices and Services Agreement. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by DAS, the Authorized Purchaser, required by applicable law, or required by an order of a tribunal having competent jurisdiction.
2. Contractor shall report to the Authorized Purchaser, as promptly as possible, any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Work Order Contract or the Prices and Services Agreement.
3. Contractor shall ensure the compliance of its employees and agents with this section 7.

7.3 Injunctive Relief. Contractor acknowledges that breach of this Section A.7, including disclosure of any Confidential Information, will give rise to irreparable injury to Authorized Purchaser that is inadequately compensable in damages. Accordingly, Authorized Purchaser may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Authorized Purchaser and are reasonable in scope and content.

7.4 Authorized Purchaser's obligations under this Section A.7 shall be subject to the Oregon Public Records Laws, ORS 192.410 and ors 192.505.

7.5 Contractor agrees to comply with all reasonable requests by Authorized Purchaser concerning Confidential Information, including without limitation (a) obtaining nondisclosure agreements from Contractor's employees and agents who are performing Services and providing copies of such agreements to Authorized Purchaser, and (b) performing criminal background checks on each of Contractor's employees and agents who are performing Services, and providing a copy of the results to Authorized Purchaser.

8. Limitation of Liability. No party shall be liable for any indirect, incidental, consequential, punitive or special damages, arising out of or related to this Price Agreement or Work Order Contracts entered into under the Price Agreement, including, without limitation, damages for loss of business profits, business interruption, loss of business information, and the like, even if the party has been advised of the possibility of such damages. This section shall not apply to any party's (a) ability to obtain injunctive or other equitable relief; and (b) indemnification obligations under Work Order Contract. Nothing in this Price Agreement and a Work Order Contract shall limit Contractor's liability with respect to death or personal injury caused by or arising from Contractor's negligence or willful misconduct.

Except for liability arising out of or related to (i) indemnification obligations under this Work Order Contract, or (ii) claims for personal injury, including death, or damage to real property or tangible personal property arising from the negligence, reckless conduct or intentional acts of Contractor, its officers, employees or agents, Contractor's liability for damages to the Authorized Purchaser for any cause whatsoever shall be limited to a maximum of:

[Authorized Purchaser must check one box, following negotiations with the Contractor producing a mutually agreed upon amount. Check with legal counsel and Risk Management on the appropriate amount.]

- One times
- One and a half times
- Twice

The charges for the product or service that is the subject of the claim, whichever is greater.

In the event no box is checked, the parties agree that the maximum will be twice.

9. INDEMNITIES.

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

9.2 IP Indemnity. In addition to and without limiting the generality of Section 9.1, Contractor expressly agrees to, indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables or the System or use thereof infringe any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Authorized Purchaser's prior written consent, which Authorized Purchaser shall not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Authorized Purchaser 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 System continues to function in conformance with the specifications set forth in this Work Order Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Work Order Contract, and Authorized Purchaser may pursue any rights and remedies available to it under this Work Order Contract, including termination. Contractor shall not be liable under this section for any claim for infringement based solely on the following:

- A. Contractor's compliance with any designs, specifications, or instructions provided by Authorized Purchaser or by a third party acting on Authorized Purchaser's behalf;
- B. Authorized Purchaser's modification of the Deliverables or the System other than as set forth in this Work Order Contract, the Deliverables' or System's specifications, or without the written permission of Contractor;
- C. Use of the Deliverables or the System in a manner other than as provided for in this Work Order Contract, their specifications, or as authorized in writing by Contractor;
- D. Use of the Deliverables or the System in combination, operation, or use of with other products in a manner that does not comply with their specifications, not specified by Contractor or of which Contractor has not approved in writing.

9.3 Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 9.1 and 9.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 9.1 or Section 9.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is

prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

9.4 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, damage to tangible personal property and damage to intangible 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 Work Order Contract

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

11. No Third-Party Beneficiaries. Authorized Purchaser and Contractor are the only parties to this Work Order Contract and are the only parties entitled to enforce its terms. Nothing in this Work Order Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Work Order Contract.

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

13. Notices. Except as otherwise expressly provided in this Work Order Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor at the address or number set forth on Exhibit D to the Work Order Contract, and to Authorized Purchaser at the address or number set forth on Exhibit E to the Work Order Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 13. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against Authorized Purchaser, such facsimile transmission must be confirmed by telephone notice to the Authorized Purchaser Authorized Representative. Any communication or notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative.

14. Counterparts. This Work Order Contract may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Work Order Contract so executed shall constitute an original.

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

16. Integration. The Prices and Services Agreement, this Work Order 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 Work Order Contract.

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

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

19. Applicability of Section B and Section C of this Work Order. Section B of this Work Order applies if the Authorized Purchaser is procuring **only Software, or only Software and maintenance and support services.** Section C of this Work Order applies if the Authorized Purchaser is procuring **Software and Services, or only Services.**

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

21. Product and Services Purchased.

Agency Contact/Phone:		Order Date		Delivery	
Vendor Name: Address:		Bill to:			
		Ship to:			
Item	Description	Qty	U/M	Unit Price	Extended Price
FOB:				Sub Total	
Terms:				Freight	
Signature Authorized Agent/Date:					
Contractor's Signature/Date:				TOTAL	

**Section B. FOR PURCHASES OF SOFTWARE ONLY, OR SOFTWARE AND MAINTENANCE ONLY
(NO OTHER SERVICES)**

1. WORK ORDER CONTRACT MAXIMUM PAYABLE AMOUNT: The maximum not-to-exceed amount payable to Contractor under this Work Order Contract is \$ _____, unless an Amendment is issued to increase the amount, as authorized by and pursuant to provisions of the Price Agreement or Work Order Contract.

2. WORKERS' COMPENSATION: The Contractor, its subcontractor(s), if any, and all employers providing work, labor or materials under this Contract may be subject employers under the Oregon Workers' Compensation Law and, if applicable, shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.

3. STANDARD AND SPECIAL TERMS AND CONDITIONS: The terms and conditions printed on this page are standard to State of Oregon contracts for the purchase of goods. There may also be special terms and conditions in the Request for Proposal which apply only to this Work Order Contract.

4. DELIVERY: All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the Authorized Purchaser except as to latent defects, fraud and Contractor's warranty obligations. Contractor and Authorized Purchaser may agree to deliver Software, Maintenance or both via electronic delivery. Contractor may deliver Software to Authorized Purchaser via the following:
(Authorized Purchaser and Contractor shall check all mutually agreed to modes that apply)

- Electronic Delivery
- Non-electronic Delivery

Contractor may deliver Maintenance via the following:

(Authorized Purchaser and Contractor shall check all mutually agreed to modes that apply)

- Electronic Delivery
- Non-electronic Delivery

5. INSPECTIONS: Products furnished under this Work Order Contract shall be subject to inspection and test by the Authorized Purchaser at times and place determined by the Authorized Purchaser. If the Authorized Purchaser finds Products furnished to be incomplete or not in compliance with solicitation specifications, the Authorized Purchaser may reject the Products and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the Authorized Purchaser, the Authorized Purchaser may reject the Products and cancel the Work Order Contract in whole or in part.

5a. Nonconformity. The Authorized Purchaser will have 30 calendar days (or a mutually agreed upon time frame between the Authorized Purchaser and Contractor of not less than 30 calendar days) after receipt of Products to inspect the Products and provide notice of nonconformity. If no notice of nonconformity is provided on or before 30 calendar days after receipt of the Products (or a mutually agreed upon time frame between Authorized Purchaser and Contractor of not less than 30 calendar days), then the Products are deemed accepted.

6. WARRANTIES: Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties, with a minimum ninety day warranty period. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. Contractor represents and warrants that all software provided by Contractor under this Work Order Contract is DOD 5015.2 or 5015.02 certified and meets the requirements of such certification as determined by the Authorized Purchaser and DAS. Contractor represents and warrants that 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 Work Order Contract in accordance with the standards prevalent in Contractor's profession. All warranties shall run to the Authorized Purchaser.

7. CASH DISCOUNT: If the Authorized Purchaser is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

8. PAYMENT: Payment for completion of State of Oregon contracts is normally made within 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8% APR) on the outstanding balance or the amount permitted by ORS 293.462, whichever is lower. Authorized Purchaser may purchase maintenance in advance in accordance with the Maintenance and Support Agreement, Exhibit H.

9. TERMINATION: This Work Order Contract may be terminated by mutual consent of both parties or by the Authorized Purchaser at its discretion. The Authorized Purchaser may cancel an order for goods at any time with five (5) business days prior written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this Work Order Contract as directed by the Authorized Purchaser. If this Work Order Contract is so terminated, Contractor shall be paid in accordance with the terms of the Work Order Contract for goods delivered and accepted and services provided and accepted.

10. FORCE MAJEURE: Neither party to this Work Order Contract shall be held responsible for delay or default caused by fire, riot, acts of God or war, which is beyond the party's reasonable control. The Authorized Purchaser may terminate this Work Order Contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Work Order Contract.

11. BREACH OF CONTRACT: Should Contractor breach any of the provisions of this Work Order Contract or the Price Agreement, the Authorized Purchaser and DAS each reserve the right to cancel this Work Order Contract upon written notice to Contractor and opportunity to cure. Contractor shall be liable for any and all damages suffered by the Authorized Purchaser and DAS as the result of Contractor's breach of contract in the event of repeated breach of public or private contracts, Contractor shall be subject to disqualification on State of Oregon of contracts, as provided in ORS chapter 279 and OAR chapter 137.

12. HOLD HARMLESS: Contractor shall indemnify, defend and hold harmless the State of Oregon, DAS and Authorized Purchaser and their divisions, officers, employees, agents and members, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this Work Order Contract.

13. ACCESS TO RECORDS: The Contractor shall maintain all fiscal records relating to this Work Order Contract In accordance with generally accepted accounting principle and shall maintain any other records relating to this Work Order Contract in such a manner as to clearly document Contractor's performance hereunder for a minimum period of three (3) years, or such longer period as may be required by applicable law following expiration or termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price Agreement, whichever date is later. The State of Oregon, Authorized Purchaser and their agencies, the Secretary of State Audits Division, the federal government and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Work Order Contract, to perform examination, and audits and make excerpts and transcripts.

14. AMENDMENTS: The terms of this Work Order Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Authorized Purchaser.

15. SEVERABILITY: If any provision of this Work Order Contract is declared by a court of competent jurisdiction to be illegal or in conflict with the law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Work Order Contract did not contain the particular provision held invalid.

16. WAIVER: Failure of the Authorized Purchaser to enforce any provision of this Work Order Contract shall not be a waiver or relinquishment by the Authorized Purchaser of its right to such performance in the future nor of the right to enforce any other provisions of this Work Order Contract.

17. GOVERNING LAW; JURISDICTION, VENUE: This Work Order Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules

or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the Authorized Purchaser (and/or any other agency or department of the State of Oregon) and the Contractor that arises from or relates to this Work Order Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts. Nothing herein shall be construed as a waiver of the State of Oregon's or Authorized Purchaser's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

18. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Neither the Contractor nor the Authorized Purchaser shall assign, sell, transfer, or subcontract rights or delegate responsibilities under this Work Order Contract in whole or in part, without the prior written approval of this Authorized Purchaser. No such written approval shall relieve Contractor of any obligations of this Work Order Contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the Authorized Purchaser under the Work Order Contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this Work Order Contract shall be binding upon and shall inure to the benefit of the parties to the Work Order Contract and their respective successors and assigns.

19. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods under this Work Order Contract, including, without limitation, the provisions of ORS 279C.505, 279C.515, and 279B.235, as set forth below and the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336). ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

20. ORDER OF PRECEDENCE: This Work Order Contract consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Price Agreement, less its Attachments and Exhibits; (b) the Work Order Contract terms and conditions Attachment A, less its Exhibits; (c) the Product and Price List Attachment C; (d) the RFP, Attachment D; (e) Contractor's Proposal, Attachment E; (f) the Price Agreement Exhibits; and (g) the Work Order Contract Exhibits. The aforementioned Attachments and Exhibits are by this reference incorporated in the Price Agreement.

21. PAYMENTS REQUIRED BY ORS 279C.505 AND 279B.220: For all goods provided under this Work Order Contract, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) if applicable pay all contributions or amounts due the industrial Accident Fund from the contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

22. STATE PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly is due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this Work Order Contract, the Authorized Purchaser may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this Work Order Contract. The payment of a claim by the Authorized Purchaser pursuant to this paragraph 21 shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

23. HOURS OF LABOR: If required by law, including ORS 279B.020, no person shall be employed by the Contractor for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279B.020 and 279C.540.

24. SAFETY AND HEALTH REQUIREMENTS: Goods and services provided under this Work Order Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

25. AWARD TO 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 Work Order Contract. The Authorized Purchaser may withhold final payment under this Work Order Contract until Contractor has met this requirement.

26. RECYCLABLE PRODUCTS: Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this Work Order Contract. If applicable, Contractor shall specify the minimum percentage of recycled product in the goods provided.

27. MATERIAL SAFETY DATA SHEET: In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide the Authorized Purchaser with a Material Safety Data Sheet for any goods provided under this Work Order Contract which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 155-005 (2); 437-155-025). In addition, Contractor must label, tag or mark such goods.

**Section C. FOR PURCHASES OF SERVICES ONLY, OR SOFTWARE AND SERVICES
(NO SOFTWARE ONLY, OR SOFTWARE AND MAINTENANCE ONLY)**

I. DEFINITIONS.

“Confidential Information” is defined in Section 8.1.

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

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

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

“Final Acceptance” is defined in Section 2.5.

“Intellectual Property Rights” is defined in Section 11.2.

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

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

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

“Operating Environment” means the hardware, programming languages, software, including, but not limited to, operating system software, the system architecture and firmware necessary for the System to operate in accordance with its specifications.

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

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

“RFP” means the Request for Proposal.

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

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

"Services Retention Amount" is defined in Section 6.3.1.

“Software Retention Amount” is defined in Section 6.3.2.

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

“System” means the sum total of the Developments, the Contractor Intellectual Property, the Third Party Intellectual Property and the COTS Software described in the Statement of Work that comprise the information system that Contractor will develop and implement under this Work Order Contract.

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

“Warranty Period” means the period that begins on the date of Final Acceptance, and ends ninety calendar days after the date of Final Acceptance.

II. SCOPE OF SERVICES.

2.1 Performance and Delivery.

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

2.1.2 All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the Authorized Purchaser except as to latent defects, fraud and Contractor's warranty obligations. Contractor and Authorized Purchaser may agree to deliver Software, Maintenance or both via electronic delivery. Contractor may deliver Software to Authorized Purchaser via the following:

(Authorized Purchaser and Contractor shall check all mutually agreed to modes that apply)

- Electronic Delivery
- Non-electronic Delivery

Contractor may deliver Maintenance via the following:

(Authorized Purchaser and Contractor shall check all mutually agreed to modes that apply)

- Electronic Delivery
- Non-electronic Delivery

2.2 Responsibilities of Authorized Purchaser. If this Work Order Contract requires Authorized Purchaser to provide any material goods or services, and Authorized Purchaser fails to provide the requisite quality or quantity of such goods or services, or fails to provide such material goods or services in a timely manner, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by Authorized Purchaser's failure. No monetary compensation is allowed, including overhead claims, except in the case of any single delay that impacts the critical path of the schedule, as defined in the Statement of Work, that is primarily the fault of Authorized Purchaser, and which exceeds thirty (30) continuous calendar days. In such event, commencing with the thirty-first (31st) day of the continuing Authorized Purchaser critical path delay, Authorized Purchaser shall: (a) execute an amendment with Contractor pursuant to this Work Order Contract to adjust the schedule as necessary and appropriate; and (b) consider Contractor's proposed amendment, if submitted, to adjust payment amounts as necessary and appropriate.

In no case shall Contractor make a claim for delays if the Work is completed within the Contract time but after Contractor's scheduled completion.

2.3 Delivery and Review of Deliverables.

2.3.1 Contractor shall deliver Deliverables and complete Milestones as set forth in the Statement of Work by no later than the date or dates set for delivery in the Statement of Work. Interim delivery dates, both critical and non-critical, are set forth in the Statement of Work and are subject to Authorized Purchaser performing its responsibilities in a timely manner.

2.3.2 Contractor shall provide written notice to Authorized Purchaser upon delivery of a completed Deliverable to Authorized Purchaser. By no later than (i) 15 calendar days after receipt of such notice, or (ii) the date set forth in the Delivery Schedule for Authorized Purchaser's review, Authorized Purchaser shall determine whether the Deliverable meets the specifications and performance standards set forth in the Statement of Work. With respect to any Deliverables that are susceptible to acceptance testing, Authorized Purchaser shall conduct interim acceptance testing as set forth in Section 2.4.1. If Authorized Purchaser determines that the Deliverable meets the specifications and performance standards, Authorized Purchaser shall notify Contractor of Authorized Purchaser's acceptance.

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

2.4 Acceptance Testing. In the event the Statement of Work contemplates acceptance testing, this Section 2.4 applies.

2.4.1 Interim Acceptance Testing. In the event the Statement of Work contemplates acceptance testing of any Deliverable prior to the delivery of the complete System for acceptance testing as set forth in this Section 2.4, Authorized Purchaser and Contractor shall conduct such interim acceptance testing as set forth in the Statement of Work. Notwithstanding the preceding sentence, however, when the complete System is delivered, the provisions of Sections 2.4.2, 2.4.3 and 2.5 will be applicable to the Authorized Purchaser's acceptance testing of the entire System, and Authorized Purchaser's acceptance of a Deliverable pursuant to any interim acceptance testing as set forth in the Statement of Work shall not be construed as a waiver by the Authorized Purchaser of its right to decline to accept the System if the System fails System acceptance testing as set forth in this Section 2.4.

2.4.2 Initial System Testing. Upon completion of the System, Contractor shall install the System in the Operating Environment at the location set forth in Exhibit A to this Work Order Contract. Authorized Purchaser will test the entire System by using it in off-line parallel processing of Authorized Purchaser's operational data in order to determine if it meets the specifications and requirements set forth in this Work Order Contract. If the System fails to conform to or perform in accordance with those requirements, Authorized Purchaser will notify Contractor, in writing, specifying the manner in which it fails to comply. Upon receipt of such written notice, Contractor shall correct any such failure within ten (10) business days from the date of receipt of Authorized Purchaser's notice or such date as Authorized Purchaser shall specify in its notice, and shall resubmit the corrected System to Authorized Purchaser for retesting in accordance with this Section 2.4.2, all at no additional charge to Authorized Purchaser.

2.4.3 Acceptance Period. Upon completion of Initial System Testing, Authorized Purchaser shall use the System for the transformation and processing of System data in a live production environment for a minimum period of ninety (90) days. At the end of such ninety (90) day period, there shall be no known unresolved or uncorrected program errors, as communicated in writing from Authorized Purchaser to Contractor. For the purpose of this Section 2.4.3, "unresolved or uncorrected program errors" are programming errors that prevent the System from meeting the functional specifications and requirements of this Work Order Contract. If the System fails to conform to or perform in accordance with those requirements, Authorized Purchaser will notify Contractor, in writing, specifying in reasonable detail the manner in which it fails to comply. Upon receipt of such written notice, Contractor shall correct any such failure within five (5) business days from the date of receipt of Authorized Purchaser's notice or such date as Authorized Purchaser shall specify in its notice, and shall resubmit the System to Authorized Purchaser for reevaluation, all at no additional charge to Authorized Purchaser. Thereafter, if the System fails to conform or perform as required, Authorized Purchaser may allow Contractor to continue to correct the System or Authorized Purchaser may declare a material breach of this Work Order Contract by Contractor.

2.5 Final Acceptance. "Final Acceptance" of the System will occur when, in the Authorized Purchaser's sole determination, the following events have occurred or conditions exist:

2.5.1 Authorized Purchaser has notified Contractor that all System acceptance tests required pursuant to Section 2.4 have been successfully completed for the System;

2.5.2 All System database inventories and configuration files are complete and operating correctly;

2.5.3 All items of System Documentation are complete, inventoried and accepted by the Authorized Purchaser. Contractor shall provide all text documentation in hard copy or in an electronic format approved by Authorized Purchaser, or both;

2.5.4 All documentation, Software, configuration data, and System configuration are complete and are stored and controlled under a configuration management system acceptable to Authorized Purchaser; and

2.5.5 Contractor has delivered all source code and Documentation for the Developments to Authorized Purchaser in accordance with the terms of the Work Order Contract.

2.6 Warranty Period; System Maintenance.

2.6.1 Warranty Period. During the Warranty Period, Contractor will, at no charge to Authorized Purchaser, furnish such materials and services as shall be necessary to correct any defects in the System and maintain the System in good working order in accordance with the warranties, requirements and response times provided in the Work Order Contract.

2.6.2 Long Term Maintenance. Contractor shall, upon expiration of the Warranty Period at the option of Authorized Purchaser, provide maintenance and support in accord with the requirements for maintenance and support as detailed in Exhibit H. Maintenance and Support Agreement.

III. CHANGE CONTROL PROCEDURES.

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

3.2 Analysis of Change Requests; Change Orders. The party to whom the written change request has been submitted, if it has not been rejected pursuant to Section 3.1, shall analyze such change request to determine the effect that the implementation of the change will have on the Statement of Work. If Contractor requests to make changes in its design or implementation of the System to enable the System to meet the requirements of the Statement of Work, such changes will be made at no cost to Authorized Purchaser, unless such changes are due to the failure of Authorized Purchaser or its agents to perform its or their responsibilities in a timely manner. If any change is approved, the party that submitted the request for the change shall prepare a written change order, detailing all modifications to the scope, price, Delivery Schedule or other terms (the "Change Order"). A Change Order at a minimum shall contain the following information:

3.2.1 The date of issuance of the Change Order;

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

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

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

3.2.5 The cumulative cost of all Change Orders previously issued.

A Change Order shall alter only that portion of the Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Work Order Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Work Order Contract. No Services shall

be performed pursuant to the Change Order and no payment shall be made on account of the Change Order until the Change Order is fully executed and approved as set forth in Section 19.15.

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

IV. CONTRACTOR'S PERSONNEL.

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

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

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

V. TERM.

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

VI. PAYMENT.

6.1 Maximum Payment Amount. Notwithstanding any other provision of this Work Order Contract to the contrary, the maximum, not-to-exceed compensation that Authorized Purchaser will pay to Contractor is set forth in the applicable Statement of Work (the "Maximum Not-To-Exceed Compensation"), which includes payment for any allowable expenses for which Contractor may request reimbursement under this Work Order Contract.

6.2 Payments.

6.2.1 Payment for Services. Subject to Sections 6.3 and 6.5, Authorized Purchaser shall pay Contractor for each Deliverable delivered pursuant to the Statement of Work and accepted by Authorized Purchaser in accordance with the payment schedule included in the Statement of Work which may include: the lesser of (a) the number of Contractor hours devoted to that Deliverable for each Contractor employee or subcontractor multiplied by the applicable hourly billing rate identified in Exhibit A or (b) Deliverable based or milestone payments; or, for maintenance only (c) the advance periodic payment within the "not-to-exceed" amount associated with that Deliverable set forth in the Statement of Work.

6.2.2 Payment for COTS Software. Subject to Sections 6.3 and 6.5, Authorized Purchaser shall pay Contractor for COTS Software delivered under this Work Order Contract upon Authorized Purchaser's acceptance of the COTS Software, in the amount set forth in the Statement of Work for the COTS Software.

6.2.3 Reserved.

6.3 Retention Amount.

6.3.1 Retention Amount for Services. If included in the Statement of Work, Authorized Purchaser shall in all events be permitted to hold back an amount (the "Services Retention Amount") of not more than ten percent (10%) of any amount that is payable by Authorized Purchaser to Contractor, other than amounts attributable to the license of COTS Software, if any. Authorized Purchaser shall pay the then accrued Services Retention Amount to Contractor within thirty (30) days following Final Acceptance.

6.3.2 Retention Amount for COTS Software. If included in the Statement of Work, Authorized Purchaser shall in all events be permitted to hold back an amount (the "Software Retention Amount") of not more than ten percent (10%) of any amount payable to Contractor pursuant to Section 6.2 for COTS Software. Authorized Purchaser shall pay the accrued Software Retention Amount for the applicable item of COTS Software within 30 days of Authorized Purchaser acceptance of the COTS Software according to acceptance criteria and processes set forth in this Work Order Contract.

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

6.5 Invoices. Authorized Purchaser shall pay Contractor not more than once each month upon Contractor's submission of detailed invoices that set forth the Services performed and goods accepted by Authorized Purchaser. Such invoicing may be comprised of multiple invoices over the course of a given payment period and each shall comply with the requirements of Sections 6.2, 6.3, and 6.4 and shall describe all goods delivered and all Services performed with particularity and by whom they were performed, including name and job title, reference to the specific activity in the Statement of Work, number of hours spent completing the Services. Contractor shall request payment only for goods or Services that represents completion of specific Milestones or Deliverables. Contractor shall submit invoices to Authorized Purchaser's Authorized Representative. Authorized Purchaser will have the right to review each such invoice for compliance with the requirements of this Section 6.5 and any other relevant provisions of this Work Order Contract. All payments to Contractor are subject to ORS 293.462.

6.6 Limit on Payments. Contractor shall not submit invoices for, and Authorized Purchaser shall not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Work Order Contract, pursuant to Section 19.15, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or goods delivered before the Work Order Contract Effective Date or after termination of this Work Order Contract, as it may be amended from time to time, in accordance with its terms.

VII. OWNERSHIP AND LICENSE IN DELIVERABLES.

See Section A of this Work Order Contract, provision 6.

VIII. CONFIDENTIALITY AND NON-DISCLOSURE.

See Section A of this Work Order Contract, provision 7.

IX. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.

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

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

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

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

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

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

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

9.1.7. Contractor represents and warrants that all COTS Software provided by Contractor under this Work Order Contract is DOD 5015.2 or 5015.02 certified, and meets the requirements of such certification as determined by the Authorized Purchaser.

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

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

9.2.2 Through the expiration of the Warranty Period, all Deliverables delivered by Contractor to Authorized Purchaser, and the System as a whole, shall conform to the specifications, capabilities, characteristics, functions and performance standards set forth in this Work Order Contract, including the Statement of Work and any Documentation provided by Contractor, shall be free from error or defect that materially impairs their use, and shall be free from defects in materials, workmanship and design.

9.2.3 Except as otherwise provided in this Work Order Contract, all Deliverables supplied by Contractor to Authorized Purchaser shall be transferred to Authorized Purchaser free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.

9.2.4 When used as authorized by this Work Order Contract, no Deliverable delivered by Contractor to Authorized Purchaser infringes, nor will Authorized Purchaser's use, duplication, or transfer of such Deliverables infringe, any

copyright, patent, trade secret, or other proprietary right of any third party. The remedy for breach of the warranty is as provided in Section 11.2.

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

9.3 WARRANTIES EXCLUSIVE; DISCLAIMERS. THE WARRANTIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE AGENCY'S USE OF THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE.

X. LIMITATION OF LIABILITY.

See Section A of this Work Order Contract, provision 8.

XI. INDEMNITIES.

See Section A of this Work Order Contract, provision 9.

XII. INSURANCE.

Contractor shall provide insurance as specified in the Price Agreement.

XIII. Events of Default.

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

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

13.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within thirty (30) business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice; or

13.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Work Order Contract, fails to perform the Services in material conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Work Order Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice.

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

13.2.1 Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Work Order Contract, and Authorized Purchaser fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

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

XIV. Remedies for Default.

14.1 Authorized Purchaser's Remedies. In the event Contractor is in default under Section 13.1, Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Work Order Contract and at law or in equity, which include, without limitation:

14.1.1 termination of this Work Order Contract under Section 15.2;

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

14.1.3 with respect to COTS Software for which Authorized Purchaser has paid before Final Acceptance, returning the COTS Software to Contractor for which Authorized Purchaser has paid in exchange for a return of all moneys previously paid for such COTS Software, and

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

14.1.5 exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Sections 13.1, the rights and obligations of the parties shall be the same as if this Work Order Contract was terminated pursuant to Section 15.1.

14.2 Contractor's Remedies. In the event Authorized Purchaser terminates this Work Order Contract as set forth in Section 15.1, or in the event Authorized Purchaser is in default under Section 13.2 and whether or not Contractor elects to exercise its right to terminate the Work Order Contract under Section 15.3, Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the hours worked but not yet billed with respect to each Deliverable, up to the not-to-exceed amount for the Deliverable set forth in the Statement of Work; authorized expenses incurred, less previous amounts paid and any claims which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.2, Contractor shall pay any excess to Authorized Purchaser upon written demand.

XV. Termination.

15.1 Authorized Purchaser's Right to Terminate. Authorized Purchaser may, at its sole discretion, terminate this Work Order Contract, but not the Price Agreement, as follows:

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

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

15.1.3 Authorized Purchaser may terminate this Work Order 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 Work Order Contract is prohibited or Authorized Purchaser is prohibited from paying for such Services from the planned funding source;

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

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

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

XVI. INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING.

16.1 Perform All Services. Contractor shall perform all Services as an independent contractor. Although Authorized Purchaser reserves the right to evaluate the quality of the completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

16.2 Declaration and Certification. Contractor by execution of this Work Order Contract declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel who will perform Services under this Work Order Contract, and (ii) in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Services under this Work Order Contract. Contractor also declares and certifies by execution of this Work Order Contract that it is not an "officer," "employee," or "agent" of Authorized Purchaser, as those terms are used in ORS 30.265.

16.3 Responsible for Taxes.

See Section A of this Work Order Contract, provision 10.

XVII. COMPLIANCE WITH APPLICABLE LAW.

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

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

XVIII. DISPUTE RESOLUTION.

18.1 Litigation. Any claim, action, suit, or proceeding (collectively, “Claim”) between Authorized Purchaser (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Work Order Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 18.1.

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

XIX. MISCELLANEOUS PROVISIONS.

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

19.2 Recycling. Contractor shall, to the maximum extent economically feasible in the performance of the Work Order Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

19.3 Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Services required by this Work Order Contract or assign or transfer any of its interest in this Work Order Contract without Authorized Purchaser’s prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of Authorized Purchaser. Authorized Purchaser’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Work Order Contract.

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

19.5 No Third-Party Beneficiaries.

See Section A of this Work Order Contract, provision 11.

19.6 Funds Available and Authorized.

See Section A of this Work Order Contract, provision 12.

19.7 Records Maintenance; Access. Contractor shall maintain all financial records and other records relating to its performance under this Work Order Contract in accordance with generally accepted accounting principles and in such a manner as to clearly document Contractor’s performance. Contractor acknowledges and agrees that, subject to Article VIII of this Work Order Contract, Authorized Purchaser, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations

and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of three (3) years, or such longer period as may be required by applicable law, following termination of this Work Order Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Work Order Contract, whichever date is later.

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

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

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

19.11 Force Majeure. Neither Authorized Purchaser nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Each party 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 Work Order Contract.

19.12 Notices.

See Section A of this Work Order Contract, provision 13.

19.13 Severability. The parties agree that if any term or provision of this Work Order Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Work Order Contract did not contain the particular term or provision held to be invalid.

19.14 Counterparts.

See Section A of this Work Order Contract, provision 14.

19.15 Amendments. This Work Order Contract may be amended, modified, or supplemented only by a written amendment signed by Authorized Purchaser and Contractor that has been approved by DAS and DOJ, if required by applicable law. Any amendment that provides for additional goods or services may only provide for goods or services directly related to the scope of goods and services described in the RFP, and no amendment shall be effective until all requisite signatures and approvals are obtained.

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

19.5.1.1 Amendments required as a result of necessary changes in applicable federal and State law or the State's or Authorized Purchaser's business processes that may restructure the State, Authorized Purchaser or the Authorized Purchaser's requirements related to the Services acquired;

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

19.5.1.3 Amendments to extend the term of the Work Order Contract in accordance with the terms and conditions of the Price Agreement and RFP;

19.5.1.4 Amendments to increase the Maximum-Not-to-Exceed Amount for the Work Order Contract, or to set or increase an established Maximum-Not-to-Exceed Amount for a Work Order Contract, according to the rates established in Attachment C to Price Agreement, the Product and Price List, based on changes to Services;

19.5.1.5 Amendments to delete Deliverables from the Statement of Work; and

19.5.1.6 Amendments to change the nature, type and processes related to the deliverables reflected in the RFP and Statement of Work.

19.16 Disclosure of Social Security Number

See Section A of this Work Order Contract, provision 15.

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

19.18 Reserved.

19.19 Integration.

See Section A of this Work Order Contract, provision 16.

19.20 No Partnership.

See Section A of this Work Order Contract, provision 17.

19.21 Publicity.

See Section A of this Work Order Contract, provision 18.

Section D. Execution and Signatures

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

2. CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY AGENCY APPROVALS.

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

CONTRACTOR

By: _____

Title: _____

Date: _____

Telephone number: _____ Facsimile number: _____

AUTHORIZED PURCHASER

Authorized Signature: _____

Title: _____

Date: _____

Telephone Number: _____ Facsimile Number: _____

DEPARTMENT OF JUSTICE LEGAL SUFFICIENCY REVIEW AND APPROVAL

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

Authorized Signature: _____

Title: _____

Date: _____

Telephone Number: _____ Facsimile Number: _____

(signatures continued on next page)

**DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE PROCUREMENT OFFICE**

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

Authorized Signature: _____

Title: _____

Date: _____

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

EXHIBIT A
to Work Order Contract

**(Not required if purchasing Software Only, Maintenance Only, or
Software and Maintenance Only.)**

STATEMENT OF WORK

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

EXHIBIT B
to Work Order Contract

CONTRACTOR DATA AND TAX CERTIFICATION

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

Federal Tax Number _____

Oregon Tax Number _____

Contractor Signature _____ **Date** _____

EXHIBIT C
to Work Order Contract

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

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following:)**
 - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
 - C. Telephone listing is used for the business that is separate from the personal residence listing .
 - D. Labor or services are performed only pursuant to written contracts.
 - E. Labor or services are performed for two or more different persons within a period of one year.
 - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

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

B. AGENCY APPROVAL.

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

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

Authorized Purchaser Signature _____ Date _____

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

**EXHIBIT D
to Work Order Contract**

CONTRACTOR'S PERSONNEL

Authorized Representative:

Project Manager:

Other Key Persons:

EXHIBIT E
to Work Order Contract

AGENCY PERSONNEL

Authorized Representative:

Project Manager:

EXHIBIT F
to Work Order Contract

LICENSE FOR COTS SOFTWARE

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

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