STATE OF OREGON
CONTRACT FOR THE
PURCHASE OF SERVICES
("Contract")

This Contract is between the State of Oregon ("State") acting by and through the Oregon State Library ("Agency"), and LearningExpress, LLC, ("Contractor"). This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained ("Effective Date"). This Contract expires on October 31, 2015, unless terminated earlier pursuant to the provisions hereof.

Contractor agrees to perform, and Agency agrees to pay for, the services and deliverables described in section 1 (the "Services").

1. STATEMENT OF SERVICES.

Contractor shall perform Services as described below.

A. GENERAL INFORMATION.

AGENCY has been given authority pursuant to ORS 357.206 (a) to provide assistance to facilitate a statewide program of licensing electronic databases for all public, school, tribal and academic libraries in Oregon. Under the statewide licensing program, AGENCY is authorized to contract with commercial electronic database providers.

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Pursuant to the provisions of this Contract, Contractor shall provide and, on behalf of all public, school, tribal, and academic libraries across the State of Oregon, AGENCY will subscribe to the LearningExpress Library and the Computer Skills Tutorials. The links for these product sheets are as follows:

http://www.learningexpressllc.com/datasheets/LearningExpress_Library_Featured_Resources.pdf

http://www.learningexpressllc.com/datasheets/Computer_Skills_Tutorials_Product_Sheet.pdf

Contractor shall grant AGENCY and all public, school, tribal, and academic libraries and other resource sharing state institutions and colleges, universities and schools in Oregon a license to use the Services as described herein, and Contactor shall grant unlimited access, 24 hours per day, 7 days per week and 365 days per year, to AGENCY and all public, school, tribal, and academic libraries and other resource sharing state institutions and colleges, universities and schools in Oregon. The Service will provide a license and unlimited access for all Oregonians and remote access by users.

The term of the Contract will begin on the Effective Date and end on October 31, 2010, unless terminated earlier pursuant to the provisions hereof.

AGENCY will pay Contractor annually as follows:

November 1, 2010 - October 31, 2011	$133,898
November 1, 2011 - October 31, 2012	$133,898
November 1, 2012 - October 31, 2013	$136,576
November 1, 2013 - October 31, 2014	$139,308
November 1, 2014 - October 31, 2015	$142,094

Within 60 days of the Effective Date, Contractor will provide pro-rated refunds to all libraries that currently maintain a subscription to LearningExpress Library and/or the Computer Skills Tutorial. Contractor will certify to AGENCY that Contractor has made all such payments.

Contractor will provide five (5) classroom, in-person trainings before June 30, 2011 and one (1) classroom, in-person training each additional year of the Contract at various locations through-out the State of Oregon to be agreed upon by AGENCY and Contractor. Contractor shall provide the instructor and all user manuals or training materials and sufficient copies for all students attending any in-person training. In addition, Contractor shall provide training on-line.

Contractor shall provide AGENCY with any and all documentation related to the Services,as well as promotional materials.

C. ACCEPTANCE CRITERIA AND PROCESS.

Agency shall begin acceptance testing on the first day following Contractor's notice that the Services are available. Agency shall have ten (10) business days ("Acceptance Test Period") to test operations and functionality of the Services and determine whether the services meet the performance warranties and functional requirements of this Contract and Contractor's published documentation. At the end of the Acceptance Test Period, Agency shall promptly notify Contractor in writing whether the Services pass or fail the acceptance test. If the Services fail the acceptance test, the written notice will describe, with reasonable specificity, the nature of the failure or the reasons for the failure.

If the Services fail the acceptance test, the Contractor shall have ten (10) days to repair the Services at no additional cost to Agency, to make the Services conform to performance warranties and requirements of this Contract ("Modified to Conform"). If the Services are Modified to Conform, Agency shall run a second acceptance test upon completion. If the Services fail the second acceptance test, Agency may, at its option:

(a) refuse the Services and Contractor shall refund the purchase price and any license and other fees paid under this Contract, and pay Agency all costs and expenses Agency reasonably incurs in obtaining substitute service, or

(b) allow Contractor to try to repair the Services one or more times before deciding, based on failure of the acceptance test, that the Services cannot be Modified to Conform by Contractor.

Agency's remedies under this Section are in addition to and not in lieu of any other remedies granted to Agency by law or elsewhere in the Contract for Contractor's default.

During the term of this Contract, in addition to any other warranties and representations, Contractor will, at no additional charge: (a) maintain the Services in good working order in accordance with the warranties, requirements, response times, system availability, and annual rate increases provided in the Contract; (b) provide Agency with any enhancements, updates, replacements, revisions, additions or conversions to the Services, including appropriate documentation; and (c) provide Agency with training and support, as required by the Contract. Enhancements, updates, replacements and revisions to the current version of the software will be at zero cost. Upgrades and additional services to be negotiated between the two parties.

D. SPECIAL REQUIREMENTS.

From time to time, AGENCY may request from Contractor additional services generally offered by Contractor or other providers in the market. Contractor shall use reasonable efforts to provide Agency with such services within a reasonable period of time at prices and terms equal to or better than those offered for comparable services in the market. Contractor shall negotiate in good faith with Agency appropriate price and service levels for such additional services.

In the event that there are significant developments relating to the Services during the Contract term including, but not limited to, new databases or new technology that provides increased functionality at the same or lower cost than

the Services and Contractor has made these developments commercially available to its other customers, Contractor shall provide the new developments to Agency, at Agency's request, where commercially and technically practical at no cost to the agency; upgrades will be negotiated between these parties for additional services. At least twice during each calendar year during the Contract term, Contractor shall notify Agency of new developments, if any. Contractor shall provide 24 hour seven day a week year round technology support to users both online and by telephone. All standard maintenance down time will require a one week advanced notice to all libraries. Any outages or unforeseen down time will require notice as soon as the contractor is aware of the problem with regular updates of continued outage or problems until the system is back operational as normal. If there is a system outage of seven consecutive days or more there may need to be negotiations related to compensation for extended loss of services.

2. COMPENSATION. The total amount available for payment to Contractor under section 2.A and for authorized reimbursement to Contractor under section 2.C is $ 685,774.

A. METHOD OF PAYMENT FOR SERVICES.

Contractor shall send Agency an accurate invoice for Services each September per the schedule above. The invoices shall conform to Agency's requirements. Agency shall pay all undisputed amounts. If Agency fails to pay undisputed amounts within forty-five (45) days of the date of the invoice, Contractor may assess account charges up to a maximum rate of two-thirds of one percent (2/3%) per month on the outstanding balance. All payments are subject to the provisions of ORS 293.462. Contractor shall look solely to Agency for payment of all amounts that may be due under this Contract. Agency is solely responsible for payment under the Contract. Contractor shall not be compensated for Services under this Contract from any State agency other than Agency.

B. BASIS OF PAYMENT FOR SERVICES.

Annual payments for Services. Agency shall pay Contractor annual payments upon Agency's approval of Contractor's invoice submitted to Agency for Services, but only after Agency has determined that Contractor has completed, and Agency has accepted the completed Services in accordance with section 1.C.

C. EXPENSE REIMBURSEMENT.

No Expense Reimbursement - Agency will not reimburse Contractor for any expenses under this Contract.

D. GENERAL PAYMENT PROVISIONS.

i. Agency's Payment. Agency shall pay Contractor for Services performed and Goods delivered at the rates and prices specified in section 2. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed.

ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at http://www.irs.gov. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.

iii. Funds Available and Authorized; Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

E. INVOICES.

i. Contractor shall send invoices to Agency no more often than annually for Services completed and Goods delivered and accepted by Agency in accordance with Section 1. Contractor shall include in each invoice:

a. The Contract number;
b. A detailed description of Services performed, including the dates Services were performed, all deliverables delivered during the period of the invoices; and
c. The total amount due and the payment address.

ii. Contractor shall send all invoices to Agency's Contract Administrator at the address specified in section 7 or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

3. GENERAL TERMS AND CONDITIONS.

A. INTELLECTUAL PROPERTY & OPEN SOURCE.

i. Definitions. As used in this Contract, the following terms have the meanings set forth below:
a. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from Services.
b. "Open Source Elements" means any Work Product subject to any open source initiative certified license, including Work Product based upon any open source initiative certified licensed work.
c. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.
d. "Work Product" means all Services and Goods Contractor delivers or is required to deliver to Agency pursuant to this Contract.

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

iii. Contractor Intellectual Property. If intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to Agency 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 Agency's behalf.

iv. Third Party Intellectual Property. To the extent Contractor has the authority; Contractor shall sublicense or pass through to Agency all Third Party Intellectual Property. Contractor represents and warrants that it has provided written disclosure to Agency of all Third Party Intellectual Property that must be independently licensed by Agency to fully enjoy the benefit of the Work Product. If Contractor failed to provide such written disclosure, Contractor shall secure on the Agency's behalf and in the name of the Agency, 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 Agency's behalf.

v. Open Source Approval and Notice. Any Open Source Elements in the Work Product must be approved in advance and in writing by Agency. If Agency approves the use of Open Source Elements, Contractor shall:

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

B. OTHER REPRESENTATIONS AND WARRANTIES.

i. Contractor represents and further warrants that:

a. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

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

c. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and

d. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

ii. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

C. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

ii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this 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)).

D. AMENDMENTS.

i. Circumstances Requiring Amendments. The parties anticipate that the following amendments may be necessary during the term of the Contract:
(i) The parties may amend the Description of the Services and add to or make changes in the Services to be performed;
(ii) The parties may add new Services;
(iii) The parties may change the compensation due to changes in the Services;
(iv) The parties may extend the term of this Contract; or
(v) The parties may amend this Contract as required by changes in federal, state or local law.

ii. Amendment Method. . No amendment to this Contract is effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

E. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in Contractor's performance of this Contract.

F. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

G. INSURANCE.

Contractor shall obtain the insurance required under section 4 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

H. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.

ii. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

I. INDEMNIFICATION.

i. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.I.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASOABLY WITHHELD, CONDITIONED OR DELAYED.

J. ASSIGNMENT OF ANTITRUST RIGHTS.

i. CONTRACTOR IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

ii. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO STATE, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

K. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:

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

b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or

c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice.

ii. Breach by Agency. Agency breaches this Contract if:

a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or

b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

L. REMEDIES.

i. State's Remedies. If Contractor is in breach under section 3.K.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

a. Termination of this Contract under section 3.M.ii.;

b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

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

d. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State 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 breach under section 3.K.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 3.M.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under section 3.M.ii.a, or if Agency is in breach under section 3.K.ii and whether or not Contractor elects to exercise its right to terminate this Contract under section 3.M.iii, Contractor's sole remedy is one of the following, as applicable:

a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.

b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.

If previous amounts paid to Contractor for Services and Goods exceed the amount due to Contractor under this section 3.L.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iii. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to section 3.I, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

M. TERMINATION.

i. MUTUAL CONSENT. This Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

A. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

C. Contractor is in breach under section 3.K.i.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section 3.M.ii.

iii. Contractor: Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section 3.K.ii.

N. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit

State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

O. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency contact person identified in section 7. Contractor's authorized representative is the contact person identified in section 6. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

P. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws.

Q. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding 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 HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

R. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to sections 1.C, 3.A, 3.B, 3.E, 3.I, 3.J, 3.N, 3.P and 3.R. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

S. THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

T. SEVERABILITY.

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

U. COUNTERPARTS.

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

V. INTEGRATION AND MERGER.

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

W. AMENDMENTS; WAIVER.

This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 1, Statement of Services. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

X. SURVIVAL.

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections 2.D, 3.A, 3.B, 3.G, 3.I, 3.J, 3.L, 3.N, 3.P, 3.Q, 3.S, 3.X and 4.

4 INSURANCE.

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section 4 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

i. WORKERS COMPENSATION. All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY

☒ **Required by Agency** ☐ **Not required by Agency.**

☒ **Professional Liability.** Contractor shall obtain and maintain at its own expenses for the duration of this Contract Professional Liability Insurance with a combined single limit, or the equivalent, as set forth below. This is to cover damages caused

by error, omission or negligent acts related to the professional services to be provided under this Contract. Full limits can be obtained by the purchase of one primary policy or a primary and excess policy as needed to provide the full policy limits. Such policy shall include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Network 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 Contract. The Policy shall be amended to include Independent Contractors providing Professional Services on behalf of or at the direction of Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, known wrongful acts, contractual liability, privacy policy, and insured versus insured.

☐ $(*Agency to enter amount*) Per occurrence limit for any single claimant; and
☐ $(*Agency to enter amount*) Per occurrence limit for multiple claimants

OR

☒ Per occurrence limit for any single claimant:

From:	
July 1, 2010 to June 30, 2011:	$1,600,000.
July 1, 2011 to June 30, 2012:	$1,700,000.
July 1, 2012 to June 30, 2013:	$1,800,000.
July 1, 2013 to June 30, 2014:	$1,900,000.
July 1, 2014 to June 30, 2015:	$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From:	
July 1, 2010 to June 30, 2011:	$3,200,000.
July 1, 2011 to June 30, 2012:	$3,400,000.
July 1, 2012 to June 30, 2013:	$3,600,000.
July 1, 2013 to June 30, 2014:	$3,800,000.
July 1, 2014 to June 30, 2015:	$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

iii. COMMERCIAL GENERAL LIABILITY.

☒ **Required by Agency** ☐ **Not required by Agency.**

☒ **Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

☐ $*(Agency to enter amount)* Per occurrence limit for any single claimant; and
☐ $*(Agency to enter amount)* Per occurrence limit for multiple claimants

OR

☒ Per occurrence limit for any single claimant:
From:

July 1, 2010 to June 30, 2011:	$1,600,000.
July 1, 2011 to June 30, 2012:	$1,700,000.
July 1, 2012 to June 30, 2013:	$1,800,000.
July 1, 2013 to June 30, 2014:	$1,900,000.
July 1, 2014 to June 30, 2015:	$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).
Per occurrence limit for multiple claimants:
From:

July 1, 2010 to June 30, 2011:	$3,200,000.
July 1, 2011 to June 30, 2012:	$3,400,000.
July 1, 2012 to June 30, 2013:	$3,600,000.
July 1, 2013 to June 30, 2014:	$3,800,000.
July 1, 2014 to June 30, 2015:	$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

☐ $*(Agency to enter amount)* Per occurrence limit for any single claimant; and
☐ $*(Agency to enter amount)* Per occurrence limit for multiple claimants

OR

☒ Per occurrence limit for any single claimant:
From July 1, 2010 to June 30, 2011: $100,100.
From July 1, 2011, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).
Per occurrence limit for multiple claimants:
From July 1, 2010 to June 30, 2011: $500,600.
From July 1, 2011, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

☒ **Required by Agency** ☐ **Not required by Agency.**

Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

☐ $*(Agency to enter amount)* Per occurrence limit for any single claimant; and
☐ $*(Agency to enter amount)* Per occurrence limit for multiple claimants

OR

☒ Per occurrence limit for any single claimant:
From:

July 1, 2010 to June 30, 2011:	$1,600,000.
July 1, 2011 to June 30, 2012:	$1,700,000.
July 1, 2012 to June 30, 2013:	$1,800,000.
July 1, 2013 to June 30, 2014:	$1,900,000.
July 1, 2014 to June 30, 2015:	$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).
Per occurrence limit for multiple claimants:
From:

July 1, 2010 to June 30, 2011:	$3,200,000.
July 1, 2011 to June 30, 2012:	$3,400,000.
July 1, 2012 to June 30, 2013:	$3,600,000.
July 1, 2013 to June 30, 2014:	$3,800,000.
July 1, 2014 to June 30, 2015:	$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

☐ $*(Agency to enter amount)* Per occurrence limit for any single claimant; and
☐ $*(Agency to enter amount)* Per occurrence limit for multiple claimants

OR

☒ Per occurrence limit for any single claimant:
From July 1, 2010 to June 30, 2011: $100,100.
From July 1, 2011, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).
Per occurrence limit for multiple claimants:
From July 1, 2010 to June 30, 2011: $500,600.
From July 1, 2011, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

B. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

D. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

E. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

5. Confidential Information.

5.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract is confidential information of Agency ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of Confidential Information will be treated as Confidential Information. Confidential Information does not include information that (a) is or becomes (other than disclosure by Contractor) publicly known or is contained in a publicly available document, (b) is furnished by Agency to others without restrictions similar to those imposed by this Contact, (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract, or (d) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

5.2 **Use and Disclosure.** Contractor shall hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information. Contractor shall not 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 in the performance of the Contract. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Except as directed by Agency, Contractor will not disclose, directly or indirectly, any Confidential Information to any person, and upon termination of this Contract or at Agency's request will turn over to Agency all documents, papers, and other materials in Contractor's possession which are Confidential Information.

5.3 **Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the obligations of confidentiality, 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 interests of Agency and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by Agency to ensure the confidentiality and nondisclosure of the Confidential Information, including without limitation (a) obtaining nondisclosure agreements, in a form approved by Agency, from each of Contractor's employees and agents who are performing services under the Contract, and providing copies of such agreements to Agency, and (b) performing or authorizing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to Agency.

5.4 **Publicity.** Contractor agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Agency.

6. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. 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 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland 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.

C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf;

E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and

F. Contractor ___ is / X is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). *See* section 2.D.ii.

Contractor (print Contractor's name): LearningExpress LLC

Authorized Signature: Kheil McIntyre

By (print name): Kheil McIntyre

Title: Chief Operating Officer & CFO

Date: 11/2/10

Contact Person (Type or Print): Kheil McIntyre

Contact Telephone Number: (646) 274-6439

Contact Fax Number: (212) 995-5512

Contact E-Mail Address: KMCINTYRE@LearningexpressLLC.com

7. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.

State of Oregon acting by and through

_____

Authorized Signature: _____

By (print name): James B. Scheppke

Title: State Librarian

Date: 11-2-10

Agency Contact Person (Type or Print): MaryKay Dahlgreen

Contact Telephone Number: (_____)_____

Fax Number: (_____)_____

E-Mail Address: _____