



**Oregon State Treasury**  
350 Winter St SE Suite 100  
Salem, OR 97301-3896  
503-378-2335

## **Request for Proposal #1046**

### ***Furniture Installation, Moving, and Storage Services***

RFP Issue Date: **October 20, 2015**

RFP Due Date: **November 2, 2015**

Due Time: **4:00 PM PST**

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## 1.0 INTRODUCTION

The State of Oregon, acting by and through the Oregon State Treasury (“OST”) is seeking proposals from qualified professional firms for the purpose of installation and reconfiguration of panel systems furniture, moving services and storage services. All firms submitting proposals are referred to as Proposers in this document; after negotiations, the awarded Proposer will be designated as Contractor.

### 1.1 Purpose

The purpose of this RFP is to establish a Price Agreement (the “Agreement”) for systems furniture installation, reconfiguration, tear down, moving, and storage services (the “Services”) which will be ordered through a Work Order Contract(s) (“WOC”).

It is expected that storage Services will be provided by Proposer at Proposer’s site. All Services related to systems furniture and moving Services will be completed onsite at any of OST’s office locations. Current OST office locations include, but are not be limited to:

350 Winter Street NE Suite 100, Salem, OR 97301

16960 SW Upper Boones Ferry Road, Building E, Portland, OR 97226

OST has an immediate need for an upcoming time-sensitive project that is anticipated to be performed under the first WOC assignment. OST’s Investment Division currently consists of 27 staff which are located in the current Tigard and Salem offices. OST is gearing up for the onboarding of 24 new staff and relocation of the entire Division to a new fully functioning Tigard office, no later than December 1, 2015, that will accommodate these staff with the opportunity to expand for more if need be.

**The Scope of Services needed by OST are further described in Exhibit A of Attachment B.**

### 1.2 Procurement Authority and Method

OST is conducting this RFP according to ORS 279B.060.

### 1.3 Timelines

The Agreement is anticipated to be in effect by November 12, 2015. OST reserves the right to amend the resulting Agreement for additional time and/or consideration contingent upon need and the availability of approved funding.

#### **Anticipated Procurement Timetable**

The following table provides the anticipated procurement timetable. The OST reserves the right to modify the timetable at its sole discretion.

Solicitation Deliverable	Date
Issue RFP	October 20, 2015
Questions regarding Proposal Due Date	October 23, 2015
Protests Due Date	October 26, 2015
Proposal Due Date	November 2, 2015
Evaluations	November 3, 2015
Notice of Intent to Award	November 4, 2015
Agreement Execution Date	November 12, 2015

### 1.4 Payment

Payment will be made for completion of performance or progress on tasks and deliverables in conformance with Agreement and WOC requirements and all applicable standards. The method of compensation will be determined by OST for each WOC and may be based on any of the following methods (may include more than one method:

- Fixed Price for all Services; Fixed Price per Deliverable; Fixed Price per Milestone;
- Time and Materials, up to a maximum NTE WOC amount; or
- Any combination of the foregoing methods.

## 2.0 PROPOSAL REQUIREMENTS

### 2.1 Mandatory Proposal Requirements

DUE DATE:  
**November 2, 2015 by 4:00 PM PST**

DELIVERY ADDRESS:  
**Oregon State Treasury  
Attn: Connie Lelack  
350 Winter Street NE, Suite 100, Salem, OR 97301**

Proposals must be delivered in a sealed envelope, which clearly identifies the RFP number, the project name, the contact person name, agency name and address, and the proposal closing time and date. Mis-deliveries and late submittals will not be accepted or considered. Proposals must be received at the delivery address by the required time. Postmarks will not be considered. Proposals that are e-mailed or faxed will NOT be considered.

One (1) original signed proposal by an authorized signer and three (3) copies must be submitted. The proposal must not exceed ten (10) total pages; 12 pt font; 1” margins, **excluding** Cover Sheet, Cost Proposal, and Resumes.

All proposals shall be valid for ninety (90) days from the RFP closing date.

All costs associated with Proposer’s submission of the project concept and/or proposals are the sole responsibility of the proposer and shall not be borne by the State of Oregon. All proposals submitted will become public record.

OST will not be held responsible for any error or omissions from downloading the RFP. The official solicitation document is the one held at the OST.

Those proposals which are incomplete or which do not meet all requirements of the RFP, will be deemed by OST to be "non-responsive" and will be rejected. Proposals considered complete, or "responsive," will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the proposal is unclear, the proposer may be asked to provide written clarification to assist OST in determining the issue of the proposal’s responsiveness.

#### 2.1.1 Minimum Proposal Requirements

Proposer may use this section of minimum requirements as a checklist to ensure the proposal is complete:

**Proposal Cover Sheet with References: (Not counted in the page limitation)**

The Proposal must include a completed, signed Proposal Cover Sheet (refer to Attachment A).

**Proposal: (not to exceed ten (10) total pages, excluding Cover Sheet, Cost Proposal, and Resumes)**

The Proposal must be organized in accordance with the list of scored criteria in this section. Submit one (1) original signed proposal and three (3) copies.

**Cost Proposal: (Not counted in the page limitation)**

The cost proposal must be inclusive of all services, expenses and fees (i.e., Payroll expenses – hours/rate/title, Admin, Overhead, etc.)

## 2.2 Electronic Submission

Electronic (email) proposal's will not be accepted.

## 2.3 RFP Questions

All inquiries relating to the RFP process, administration, deadline or award, or to the substantive technical portions of the RFP, must be directed to the Single Point of Contact ("SPOC") listed below.

All questions regarding the intent of the work or technical aspects of the work must be submitted in writing (mail or e-mail). When appropriate, revisions, substitutions, or clarifications shall be issued as addenda to this RFP. Changes/modifications to the RFP requirements shall **ONLY** be recognized if in the form of written addenda issued by OST. OST will provide copies of any addenda to all known RFP recipients and advertise the response on the [OST website: http://www.oregon.gov/treasury/AboutTreasury/Pages/Requests-for-Proposals.aspx](http://www.oregon.gov/treasury/AboutTreasury/Pages/Requests-for-Proposals.aspx). Anyone who has received a copy of this RFP from somewhere else will only be alerted to the existence of any addenda by checking the [OST website](#).

Questions regarding this RFP will be accepted until 12:00 p.m. PST on October 23, 2015. Questions from and answers to any one proposer will be forwarded to all proposers (as soon as resolved and before the submission deadline), if such questions will clarify any part of this RFP.

Questions concerning this RFP and requests for additional information must be sent to the SPOC:

Connie Lelack, Chief Procurement Officer  
Oregon State Treasury  
350 Winter Street NE, Suite 100  
Salem, OR 97301  
Telephone: 503-378-2335  
[connie.lelack@ost.state.or.us](mailto:connie.lelack@ost.state.or.us)

## 2.4 Solicitation Changes or Protests

A Proposer who believes the RFP specifications are unnecessarily restrictive or limit competition must submit its protest to the SPOC as listed in Section 2.3 of this RFP.

Requests for change or protests of solicitation specifications or contract provisions must be delivered in person or mailed and received by OST, in writing, no later than seven (7) calendar days prior to proposal closing date. Requests for change or protests may NOT be e-mailed or faxed. No requests for change or protest of solicitation specifications or contract provisions shall be considered after the deadline stated above.

Such request for change or protests shall include the reasons for the request for change or protest, and proposed changes to specifications or provisions. Envelopes containing requests for change or protest must be marked SOLICITATION SPECIFICATION REQUEST FOR CHANGE or CONTRACT PROVISION PROTEST, and must identify the RFP number and proposal closing time and date. OST reserves the right to amend the RFP, amend the proposal acceptance closing date, or deny the request or protest.

If OST deems it necessary to amend the RFP an Addendum will be prepared and issued to all proposers. If so instructed in a particular Addendum, Proposers shall be required to sign and attach a copy of the Addendum to their proposal. If the Proposer has already submitted a proposal, the Proposer shall modify the proposal as set forth above. The OST will provide copies of any Addendum to all known RFP recipients and advertise the response on the [OST website](#). Anyone who has received a copy of this RFP from somewhere else will only be alerted to the existence of any Addendum by checking the [OST website](#).

Unless a different date is set forth in the Addendum, a Proposer may submit a Written request for change or protest to the Addendum by the close of the OST's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest, whichever date is later.

Proposals may be withdrawn at any time prior to the scheduled closing date for the receipt of proposals. This can be accomplished by written notification on company letterhead signed by an authorized representative. This notice must be delivered in person or mailed. The notice may NOT be e-mailed or faxed. OST will not be responsible for any costs associated with returning withdrawn proposals. If the Proposer chooses to pick up the proposal in person, appropriate identification and the requisite letter must be presented before OST will release the proposal.

Modifications to previously submitted proposals which are made prior to the closing date for proposal acceptance will be considered by OST, if received prior to that scheduled closing date. Envelopes must be clearly marked as to MODIFICATION, the RFP number, and the proposal closing time and date. Oral or telephone modifications or corrections will not be recognized or considered.

## **2.5 Minimum Qualifications**

Proposer must have and clearly identify within their proposal previous experience in similar related work in the installation, teardown, and reconfiguration of Herman Miller systems furniture (or similar), moving services, and storage services within the last five (5) years. The required references (see Attachment A) must reflect those projects.

## **2.6 References**

OST does not intend to score references but may contact references to verify information provided in Proposals. Proposers must provide three (3) references on the Cover Sheet (Attachment A) for projects relevant to the projects contemplated in this RFP.

## **2.7 Interviews/Follow-up Questions**

OST may conduct and score interviews/follow-up questions. If interviews/follow-up questions are conducted, they may be evaluated and scored based any on the following criteria:

- Understanding of Requested Services
- Project Management/Cost Effectiveness
- Proposer's General Qualifications
- Proposer's Capabilities
- Proposer's Relevant Experience
- Project Team and Qualifications

If interviews/follow-up questions are conducted, the following will apply:

- A minimum of 3 evaluators will score the interviews/follow-up questions;
- The interviews/follow-up questions will have a maximum score of 20 points.
- The number of Proposers selected for interviews/follow-up questions is at the sole discretion of OST.
- Follow-up questions will typically be sent via e-mail to Proposer(s) as an alternative to face-to-face interviews. However, OST may conduct face-to-face interviews if determined necessary after conducting written follow-up questions.
- Interviews normally require physical attendance at OST's offices; however, OST may elect to conduct interviews via teleconference or video conference. Further details will be included with notification of time and date of interviews, if conducted.

## **3.0 SCORED CRITERIA**

Scoring is based on the categories described below, and the Proposer must describe how they meet any other requirements that may be specified in this document. A total of 100 maximum points are possible. If the proposal is unclear, Proposers may be asked to provide written clarification.

### **3.1 Understanding of Requested Services/Project**

*30 points maximum*

Proposals will be evaluated against responses to the questions set out below:

- [a] Has the Proposer demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the Proposer identified pertinent issues and potential problems related to the project?
- [c] Has the Proposer demonstrated an understanding of the deliverables the OST expects it to provide?
- [d] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?

### **3.2 Management Plan**

*40 points maximum*

Proposals will be evaluated against responses to the questions set out below:

- [a] How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- [b] How well is accountability completely and clearly defined?
- [c] Is the organization of the project team clear?
- [d] How well does the management plan illustrate the lines of authority and communication?
- [e] To what extent does the Proposer already have the hardware, software and equipment necessary to perform the work?
- [f] Has the Proposer gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- [g] Is the proposal submitted responsive to all material requirements in the RFP?

### **3.3 Experience and Qualifications**

*20 points maximum*

Proposals will be evaluated against responses to the questions set out below:

- [a] How well has the firm demonstrated experience in completing similar projects on time and within budget?
- [b] How successful is the general history of the firm regarding timely and successful completion of projects?
- [c] If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the Proposer?

### **3.4 Cost Proposal**

*10 points maximum*

The Cost Proposal must be inclusive of all services, travel, standard fees, rates, expenses and other fees (including payroll expenses – hours/rate/title, Admin, Overhead, etc.). Cost Proposals will be evaluated for reasonableness and competitiveness.

Proposer shall provide a cost sheet that is inclusive of all rates and fees including, but not limited to:

- a. Personnel classifications and hourly rates of pay including standard time and overtime expenses
- b. Moving truck, including driver, hourly rates, and fees
- c. Storage fees per square foot
- d. Recyclable boxes
- e. Rentable storage bins
- f. Rentable machine carts
- g. Labels for furniture and boxes
- h. Any other goods and services offered by proposer

## **4.0 PROPOSAL EVALUATIONS**

### **4.1 Evaluation Process**

The selection process shall be administered in accordance with the authority and procedures in ORS 279B.060.

Proposals submitted will be reviewed to determine that all minimum requirements have been met. Proposals meeting those criteria will be forwarded to an evaluation committee for scoring against the evaluation criteria described in Section 3.0. The outcome of the evaluations may, at the OST's sole discretion, result in (a) a notice to a Proposer(s) of selection for tentative Contract negotiation and possible award; or (b) an interview notice to selected Proposer(s) describing the interview process and date(s) of interview.

### **4.2 Pass/Fail Criteria**

Each Proposal must comply with the following Pass/Fail criteria. Proposals not meeting ALL Pass/Fail criteria will be rejected, unless such failure is deemed immaterial at the sole discretion of the OST.

- Cover Sheet (refer to **Exhibit A**), including at least three (3) references.
- One (1) original signed Proposal
- Three (3) copies of the Proposal
- Proposal deadline met
- Meets minimum qualifications
- Terms and Conditions do not include conditional language
- Cost Proposal included

### **4.3 Evaluation Criteria**

Each proposal must clearly address minimum proposal requirements and all scored criteria.

### **4.4 Notice of Intent to Award**

Proposers will be notified in writing of OST's intent to award, as well as be posted on the ORPIN network.

Unsuccessful Proposers may protest the selection process, proposal award, or if applicable, rejection of their proposal. The protest must be in writing delivered in person or by mail, and must be received at the address set forth below, within seven (7) calendar days of written notification date of the pending award to another proposer, or notice of proposal rejection. The protest may NOT be e-mailed or faxed. The protest must state with clarity the issue protested, and the rationale and basis for such protest. The envelope containing the protest MUST be marked PROTEST, and MUST identify the RFP number and the closing time and date for acceptance of proposals, as well as the OST SPOC, and address as listed in Section 2.3 of this RFP.

## **5.0 GENERAL SOLICITATION TERMS**

5.1 OST may require clarification to understand any of the selected Proposer's scored criteria. Any necessary clarifications or modifications will be made before executing the Contract and may become part of the final Contract.

5.2 OST reserves the sole right and option to amend the Contract, which results from this RFP. Contract amendments may be for increases in time or, consideration, or for changes within the Statement of Work, and shall occur only upon mutual consent and signature by all parties to the Contract. All amendments shall be in writing and shall conform to the amendment process.

5.3 By submitting a proposal to this RFP, proposer shall accept all terms and conditions of Attachment B, Sample Price Agreement.

5.4 Insurance requirements for this contract are:

Workers Compensation. All employers, including Contractor and any subcontractors, that employ subject workers who work under this 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.

General Liability in the amount of \$4,000,000.00.

Automobile Liability Insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060).

5.5 Contractor shall ensure that each of its subcontractors complies with these requirements.

5.6 Contractor shall be required to provide certificates of insurance and any applicable endorsements to OST, upon request, prior to execution of the Contract.

5.7 ORS 60.701 requires that foreign corporations be registered by the State of Oregon, Office of the Secretary of State, before conducting business in the state. A foreign corporation (ORS 60.001) means a corporation-for-profit incorporated under a law other than the law of the State of Oregon. If a firm is selected for the Contract as a result of this solicitation they must register to do business in Oregon.

5.8 OST reserves the right, at its sole discretion: (1) to amend the RFP prior to the closing date (2) to amend the deadline for submitting proposals; (3) to determine whether a proposal does or does not substantially comply with the requirements of this RFP; (4) to waive any minor irregularity, informality, or nonconformance with this RFP; (5) to obtain from and/or provide to other public agencies, upon request, references, regarding the Proposer's contract performance; (6) at any time prior to Contract execution (including after announcement of the apparent awardee): (a) to reject any proposal that fails to substantially comply with all prescribed RFP procedures and requirements; and (b) to reject all proposals received and cancel this RFP upon a finding by OST that there is good cause and that such cancellation would be in the best interests of the State; (7) seek clarification on any or all proposals; and (8) negotiate the final description of work tasks, deliverables, pricing and specific terms and conditions of the sample Contract within the scope of what is advertised here for inclusion in the resulting Contract.

5.9 This RFP and one copy of each original response received, together with copies of all documents pertaining to the award of a Contract, shall be kept by OST and made a part of a file or records, which shall be open to public inspection. If a proposal contains any information that is considered a trade secret under ORS 192.501 (2), each sheet of such information must be marked with the following legend:

“This Contract constitutes a trade secret under ORS 192.501 (2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.501 (2). Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determination made pursuant to the Public Records Law.

If a Proposal contains any information that may be considered exempt from disclosure under the various grounds specified in Oregon Public Records Law, ORS 192.430 through 192.505, Proposers must clearly designate any portion of its Proposal as exempt, along with a citation to the authority relied upon. Application of the Oregon Public Records Law shall determine whether any information is actually exempt from disclosure. Identifying a Proposal in whole as exempt from disclosure is not acceptable. Failure to identify a portion of the Proposal as exempt from disclosure, and the authority used, shall be deemed a waiver of any future claim of non-disclosure of that information.

5.10 The Contractor will be required to assume responsibility for all services outlined and finalized in the Contract, whether the Contractor, a representative or subcontractor produces them. OST considers the prime Contractor responsible for any and all contractual matters, including performance of work and the stated deliverables.

- 5.11 In accordance with the 2003 Oregon Sustainability Executive Order and ORS 279A.125, Proposers must use recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document.
- 5.12 The cost, statement of work of the project and any terms and conditions as noted above in section 5.11, may be negotiated, within the overall intent described in this RFP, with the selected Proposer. If negotiations are not successful and a Contract is not executed within 60 days, OST may either: (a) terminate negotiations with the top selection and begin negotiations with the next highest ranked Proposer, (b) cancel the solicitation, or (c) continue negotiations with the highest ranked Proposer.
- 5.13 Proposers submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. For Proposers that do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. Negotiations may be conducted with responsible Proposers who submit proposals found to be reasonably likely to be selected for award.



*Cover Sheet cont.*

**Provide at least three references with telephone numbers (please verify numbers):**

<b><u>REFERENCE No. 1:</u></b> Organization Name: _____ Their Contact Person: _____ Project Title: _____	Telephone: _____ Fax: _____ Email: _____
<b><u>REFERENCE No. 2:</u></b> Organization Name: _____ Their Contact Person: _____ Project Title: _____	Telephone: _____ Fax: _____ Email: _____
<b><u>REFERENCE No. 3:</u></b> Organization Name: _____ Their Contact Person: _____ Project Title: _____	Telephone: _____ Fax: _____ Email: _____

## ATTACHMENT B



### STATE OF OREGON OREGON STATE TREASURY PRICE AGREEMENT #

This Price Agreement (the "Agreement") No. \_\_\_\_\_ is between the State of Oregon, acting by and through the Office of the Oregon State Treasurer, hereafter called "OST," and \_\_\_\_\_, hereafter called "Contractor."  
For good and sufficient consideration, including the terms and conditions herein, the parties agree as follows:

**1. Effective Date and Duration.** This Agreement shall become effective on the date this Agreement has been signed by every party hereto and, when required, approved by the Department of Justice. Unless terminated or extended, this Agreement shall expire on \_\_\_\_\_ or the expiration or termination of all Work Order Contracts ("WOC") assigned under this Agreement, whichever date occurs last. The term of this Agreement or its WOCs may be extended by execution of a written amendment extending the foregoing termination date. Expiration shall not extinguish or prejudice OST's right to enforce this Agreement with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

**2. Scope of Work.** The services that may be required under a WOC are more specifically described in the Scope of Services set forth in Exhibit A, attached and incorporated into this Agreement by this reference (the "Services" or "Work"). Contractor agrees to perform the Services required under each WOC in accordance with the terms and conditions for WOCs as set forth in this Agreement.

#### **3. Consideration.**

**a.** Compensation payable to Contractor under this Agreement and its respective WOCs, which includes any allowable expenses will be based upon the "Payment Provisions" provided in Exhibit A, Part IV of this Agreement. The maximum, not-to-exceed compensation payable to Contractor under this Agreement and its respective WOCs for providing the Services required will be further described in each WOC assigned, if any. There is no guarantee that any specific amount of work or overall dollar amounts will be assigned via WOCs under this Agreement. OST agrees to pay Contractor for Services completed under each assigned WOC as provided in the respective WOC.

**b.** Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A.

**c.** OST will pay only for completed Work that is accepted by OST.

**d.** Contractor shall submit monthly invoices to OSTs for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Agreement requires OST to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation.

**4. Agreement Documents.** This Agreement consists of the following documents which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Scope of Services), Exhibit B (Insurance Requirements), and Exhibit C (sample Work Order Contract) which are incorporated herein by this reference.

#### **5. Independent Contractor; Responsibility for Taxes and Withholding.**

**a.** Contractor shall perform all Work as an independent contractor. OST reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work product, however, OST may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

**b.** If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Agreement, represents and warrants that: Contractor's Work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Agreement.

c. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the OST, as those terms are used in ORS 30.265.

d. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, OST will not withhold from such compensation or payments any amount(s) 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 Agreement, except as a self-employed individual.

#### **6. Subcontracts and Assignment; Successors and Assigns.**

a. Contractor shall not enter into any subcontracts for any of the Work required by this Agreement, or assign or transfer any of its interest in this Agreement, without OST's prior written consent. In addition to any other provisions OST may require, Contractor shall include in any permitted subcontract under this Agreement a requirement that the subcontractor be bound by Sections 5, 6, 7, 9, 10, 11, 15, 16, 19, and 25 of this Agreement as if the subcontractor were the Contractor. OST's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement.

b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Agreement without OST's prior written consent.

**7. No Third Party Beneficiaries.** OST and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement 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 Agreement.

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

#### **9. Representations and Warranties.**

a. Contractor's Representations and Warranties. Contractor represents and warrants to OST that (1) Contractor has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms and will not violate: (i) any provision of the charter documents of Contractor, (ii) any state law or judgment, decree, order, regulation or rule of any court, or governmental authority applicable to Contractor, or (iii) any agreement to which Contractor is bound which violation would result in a material adverse effect on the business and financial condition of Contractor, (3) the Work under this Agreement shall be performed in a good and workmanlike manner and in accordance with professional standards, (4) the personnel of Contractor that are responsible for discharging Contractor's duties and obligations under this Agreement are individuals experienced in the performance of the Work contemplated under this Agreement and shall, at all times during the term of this Agreement, be qualified, professionally competent, and shall have completed, obtained and performed all registrations, filings, approvals, authorizations, consents, examinations or licensing required by any governmental authority to perform the Work, (5) there are no (i) actions, (ii) proceedings or (iii) investigations by any state or federal regulatory authority pending, or to Contractor's knowledge threatened, against Contractor (A) that could have a material adverse effect on the business and financial condition of Contractor or its ability to perform the Work or (B) that claim or allege fraud or misrepresentation by Contractor or its officers, directors or partners, including its Key Personnel, nor has Contractor, or any of its officers, directors or partners, including its Key Personnel, been found liable under or guilty of any claims of fraud or misrepresentation, and (6) any software products delivered under this Agreement that process dates or date-related data shall recognize, store, and transmit date data in a format that explicitly and unambiguously specifies the correct century.

b. Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

#### **10. Ownership of Work Product.**

a. **Definitions.** As used in this Section 10, and elsewhere in this Agreement, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than OST or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to OST pursuant to the Work.

**b. Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of OST. OST and Contractor agree that such original works of authorship are “work made for hire” of which OST is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OST’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OST. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, 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.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to OST an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on OST’s behalf.

In the event that Work Product created by Contractor under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the OST’s behalf and in the name of the OST an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on OST’s behalf.

**c. Contractor Intellectual Property.** In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to OST an irrevocable, non-exclusive, perpetual, royalty-free license to use, 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 OST’s behalf.

**d. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the OST’s behalf and in the name of the OST, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on OST’s behalf.

## **11. Indemnity.**

**a. GENERAL INDEMNITY.** CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND OST AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.

**b. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD OST, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO OST BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE OST’S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

**c. CONTROL OF DEFENSE AND SETTLEMENT.** CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; 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 FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, 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, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON’S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**12. Insurance.** Contractor shall provide insurance as indicated on Exhibit B, attached hereto and by this reference made a part hereof.

**13. Default; Remedies; Termination.**

**a. Default by Contractor.** Contractor shall be in default under this Agreement if:

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

(ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after OST's notice or such longer period as OST may specify in such notice; or

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

(iv) Contractor's representations and covenants regarding compliance with "Tax Laws" as set forth in Section 29 of this Agreement are false or become false because Contractor fails to comply with any Tax Laws during the term of this Agreement.

**b. OST's Remedies for Contractor's Default.** In the event Contractor is in default under Section 13.a, OST may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

(i) termination of this Agreement under Section 13.e(ii);

(ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

(iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and OST may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 13.a, then Contractor shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 13.e(i).

**c. Default by OST.** OST shall be in default under this Agreement if:

(i) OST fails to pay Contractor any amount pursuant to the terms of this Agreement, and OST fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

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

**d. Contractor's Remedies for OST's Default.** In the event OST terminates the Agreement under Section 13.e(i), or in the event OST is in default under Section 13.c and whether or not Contractor elects to exercise its right to terminate the Agreement under Section 13.e(iii), Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by OST, less previous amounts paid and any claim(s) that OST has against Contractor. In no event shall OST be liable to Contractor for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 13.d, Contractor shall pay immediately any excess to OST upon written demand provided in accordance with Section 20.

**e. Termination.**

**(i) OST's Right to Terminate at its Discretion.** At its sole discretion, OST may terminate this Agreement:

(A) For its convenience upon thirty (30) days' prior written notice by OST to Contractor;

(B) Immediately upon written notice if OST fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the OST's purchase of the Work or Work Products under this Contract is prohibited or OST is prohibited from paying for such Work or Work Products from the planned funding source.

**(ii) OST's Right to Terminate for Cause.** In addition to any other rights and remedies OST may have under this Agreement, OST may terminate this Agreement immediately upon written notice by OST to Contractor, or at such later date as OST may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 13.e(ii)(B) and 13.e(ii)(C) below, upon the occurrence of any of the following events:

(A) Contractor is in default under Section 13.a(i) because 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 is in default under Section 13.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Agreement and Contractor has not obtained such license or certificate within fourteen (14) calendar days after OST's notice or such longer period as OST may specify in such notice; or

(C) Contractor is in default under Section 13.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after OST's notice, or such longer period as OST may specify in such notice.

**(iii) Contractor's Right to Terminate for Cause.** Contractor may terminate this Agreement with such written notice to OST as provided in Sections 13.e(iii)(A) and 13.e(iii)(B) below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:

(A) OST is in default under Section 13.c(i) because OST fails to pay Contractor any amount pursuant to the terms of this Agreement, and OST fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

(B) OST is in default under Section 13.c(ii) because OST commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and OST fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**(iv) Return of Property.** Upon termination of this Agreement for any reason whatsoever, Contractor shall immediately deliver to OST all of OST's property (including without limitation any Work or Work Products for which OST has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such OST property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Contractor shall immediately cease all activities under this Agreement, unless OST expressly directs otherwise in such notice of termination. Upon OST's request, Contractor shall surrender to anyone OST designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

**f. Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Agreement, Contractor shall immediately cease all activities under this Agreement, unless OST expressly directs otherwise in such notice of termination. Upon termination of this Agreement, Contractor shall deliver to OST's Contract Administrator all documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. Upon request from OST's Contract Administrator, Contractor shall surrender to anyone the Contract Administrator designates, all documents, research or objects or other tangible things needed to complete the Work.

**14. Records Maintenance; Access.** Contractor shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that OST and the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

**15. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. 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 Agreement: (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.

**16. 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 Agreement. Contractor shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement.

**17. Force Majeure.** Neither OST nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of OST or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

**18. Survival.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 12, 13, 14, 18, 24, and 27.

**19. Time is of the Essence.** Contractor agrees that time is of the essence under this Agreement.

**20. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or OST at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against OST, any notice transmitted by facsimile must be confirmed by telephone notice to OST's Contract Administrator. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**21. Severability.** The parties agree that if any term or provision of this Agreement 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 the Agreement did not contain the particular term or provision held to be invalid.

**22. Counterparts.** This Agreement 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 the Agreement so executed shall constitute an original.

**23. Oregon False Claims Act.**

i. Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Contractor pertaining to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Agreement, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other liabilities that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor.

ii. Without limiting the generality of the foregoing, Contractor represents and warrants that:

a. Contractor's representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and

b. None of Contractor's performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.

iii. For purposes of this Section 23., a "False Claims Act Violation" means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.

iv. Contractor shall immediately report in writing, to OST, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under this Agreement.

v. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or OST under any other provision of law, or this Agreement.

**24. Governing Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OST (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this 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 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 Agent or the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**25. Confidentiality.**

**a.** At all times during the term of this Agreement and thereafter, Contractor shall maintain strict confidentiality with respect to any and all information of a confidential, proprietary or secret nature that Contractor, in the course of performance of the Work, has in its possession, including but not limited to information relating to the State of Oregon or local governments' financial, accounting, investment, and information technology matters, and the security measures or mechanisms used to protect such information ("Confidential Information"). All such information is confidential and Contractor shall hold such information using at least the same degree of care as it uses in maintaining the confidentiality of its own information of a similar nature. Unless permitted by the OST in writing or required by law, Contractor shall not disclose any Confidential Information, directly or indirectly, to any party, its counsel or any representatives, or use it in any way, except as provided in this Agreement or as required to perform the Work. Any disclosure of Confidential Information contrary to this provision will constitute a material breach of this Agreement and a violation of the standard of care to be exercised by Contractor hereunder.

**b.** The foregoing restrictions shall not apply to Confidential Information that (i) was lawfully in the possession of Contractor without an obligation of confidentiality prior to disclosure of the information by OST, (ii) was, or at any time becomes, available in the public domain other than through a violation of this Agreement, (iii) was independently developed by Contractor; or (iv) is disclosed pursuant to an order to do so by a court issued subpoena or similar court order

**26. Non-Disclosure Agreements.** The OST Contract Administrator must approve access to any information technology or network of OST before any Contractor personnel are granted access to the OST's network or any single system therein. The Contract Administrator may condition approval of access to the network upon execution of a Non-Disclosure Agreement in a form satisfactory to the Contract Administrator.

**27. Merger Clause; Waiver.** This Agreement 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 Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of OST to enforce any provision of this Agreement shall not constitute a waiver by OST of that or any other provision.

**28. Amendments.** OST may amend this Agreement to the extent permitted by applicable statutes and administrative rules to, among other revisions, extend its term or modify the compensation, to delete services or to add any services that are within the scope of services, if any, or any combination of the foregoing. The parties may not waive, supplemented or amended the terms of the Agreement, in any manner whatsoever, except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained.

**30. Certifications and Signature of Contractor's Authorized Representative.**

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

**CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

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 Agreement and to execute this Agreement on behalf of Contractor;

B. By signature on this Agreement for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is 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 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 local taxes administered by the Department of Revenue under ORS 305.620 and all applicable tax laws of any political subdivision of this state..

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>; and

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

Contractor (print Legal Entity name): \_\_\_\_\_

DBA (if any) \_\_\_\_\_

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

By (print name): \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

Contact Telephone Number: \_\_\_\_\_ FID #: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_

**31. Signature of State's Authorized Representative.**

State of Oregon acting by and through

**OREGON STATE TREASURY  
350 Winter Street NE Suite 100  
Salem, OR 97301**

Authorized Signature: \_\_\_\_\_  
Darren Bond, Deputy Treasurer, or designee Date

OST Contract Administrator:  
Telephone Number:  
E-Mail Address:

**DEPARTMENT OF JUSTICE**

Approved by: \_\_\_\_\_, Senior Assistant Attorney General via email on \_\_\_\_\_

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**EXHIBIT A  
SCOPE OF WORK**

**Part I. General Information.**

The purpose of this Agreement is to establish a Price Agreement for panel systems furniture installation, reconfiguration, moving, storage, and related services.

**Part II. Scope of Work**

**A. Services**

Contractor shall provide installation, reconfiguration, break down, and relocation of panel systems furniture workstations (powered and non-powered) in designated OST work areas. Work areas may be occupied and operational during the installation and reconfiguration projects.

Contractor shall provide clean-up, consisting of full wipe down of all components and files, clean all work site debris daily and removing from premises all salvaged material or scraps at the close of each day. Contractor shall notify the OST Contract Administrator of any damage done by Contractor to building systems or surrounding area within 24 hours and Contractor may be held liable for any damage, repair, or replacement thereof. Contractor shall ensure that OST work areas and storage areas are kept organized and clean to the satisfaction of OST.

Contractor shall provide project management, and attend and participate in on-site pre-installation and site verification project meetings as needed or requested by OST. Contractor shall inspect to verify conditions and damage of the jobsite pre- and post-project work, as well as for building access and conditions that may affect work.

Contractor shall conduct site visits and walk-through as needed or required by OST before and after work is performed for project planning and completeness.

Contractor shall designate at least one key person for every per project. Contractor shall work directly with OST Contract Administrator to coordinate the scheduling, planning, and configuration of each project including unloading of furniture, access to building, any damage done to building or surrounding areas, and any issues arising from project. Projects may require a pre-installation walk-thru and inspection with Contractor, which will be scheduled by OST Contract Administrator.

Contractor shall perform all Services required within the specified time. All services must be performed in the most highly professional manner, and in accordance with the utmost industry standards. Contractor shall protect the building structure, occupants and nearby pedestrians. Contractor shall take all precautions to protect employees who complete the work.

Contractor's Services may be performed at any OST office location, which may include but is not limited to:

OST Tigard Office address:  
16290 SW Upper Boones Ferry Road, Building E, Portland, OR 97224

OST Salem Office address:  
350 Winter Street NE Suite 100, Salem, OR 97301

Work is to be accomplished before, during, and after normal business hours Monday through Friday, 8:00 AM - 5:00 PM PST and may include, evening, weekend, and state holidays as agreed by OST and Contractor.

**B. Moving Services**

Contractor shall provide all moving and transportation of OST furniture products, boxes, and other office products within, to, and from OST's worksite. A moving project may include:

1. moving on the same floor;
2. moving to and from different office locations;
3. moving computer equipment and conventional office furniture (i.e., desk or bookcases, conference tables, boxes, free standing file cabinets, map cabinets, flat files, computer stands and chairs, etc.) to or from a project location; and
4. A project may include the moving of systems furniture components.

**C. Storage Services**

Contractor shall provide monthly onsite warehouse storage space for OST surplus furniture products. Contractor shall maintain a current inventory of the furniture components being stored by the OST at Contractor's site and provide current lists to OST as needed or requested.

#### **D. Corrective Work:**

Contractor is responsible to complete all Services, including deliverables, as described in each Work Order Contract to the satisfaction of OST. If OST, in its sole discretion, determines that the Services are unacceptable, Contractor is responsible to correct any deficiencies in the Services to OST's satisfaction without further compensation. OST may withhold other payments until any deficiencies have been corrected to OST's satisfaction.

### **Part III. Special Considerations.**

**A. WORK ORDER CONTRACTS.** All Goods and Services must be provided within the timeframe of each executed WOC.

1. Work Order Contract Assignments. Work Order Contracts or other purchasing forms ("WOC") will be assigned by OST for each Project. OST will provide Contractor final diagrams for each project. All WOCs must be pre-approved by OST in writing for each project and final WOCs must be provided by Contractor to OST for each project. The projects will be assigned by OST as needed. There is no guarantee that any specific amount of work or overall dollar amounts will be assigned during the term of the Agreement. The Contractor will provide all goods and Services under this Agreement only pursuant to its respective WOC(s). Upon receiving written or verbal notification by the OST that a WOC needs to be issued, the Contractor shall conclude any negotiations, and submit final cost estimates within 5 days, unless otherwise allowed by the OST. No Work under a WOC or WOC amendment shall begin before OST and Contractor have signed the WOC and other required signature are obtained on the WOC or WOC amendment. All goods and Services must be provided within the timeframe specified in the OST approved WOC. Contractor shall not assign, sell, transfer, sublet or subcontract its interest in this project, in whole or in part, without prior written consent of the OST.

2. Acceptance criteria and process. OST will inspect and either accept or reject the deliverables of each WOC within 24 hours upon completion of Services. If OST rejects the Work, then OST's written notice of rejection shall, at a minimum, itemize the apparent defects and include:

- i. a description of nonconformance between the Work and the requirements and specifications for that WOC, including warranties;
- ii. a description of any other nonconformance of the WOC (including late delivery); and
- iii. a statement indicating whether Contractor may cure the nonconformance and if so, the method in which and time period within which Contractor shall cure.

Contractor's failure to deliver the Work in accordance with the requirements of this Agreement and its respective WOC(s) is a material breach of this Agreement.

**B. SAFETY AND HEALTH REQUIREMENTS.** Goods and services provided under this Agreement must 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.

Contractor's Key Personnel shall possess a valid Oregon driver's license and be able to operate a motor vehicle. Contractor shall provide its own vehicle for use to perform analysis. Contractor shall provide trucks and vehicles licensed for use on public streets and licensed in the State of Oregon.

Contractor shall be responsible to provide Contractor's own personal safety equipment, tools, and equipment, cellular telephones, and transportation to be used by Contractor's staff in performing Services.

**C. KEY PERSONS.** Contractor and OST agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of Services form part of the basis of agreement between the parties for this Agreement and is an individual through whom Contractor shall provide to Agency the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Each of the following is a Key Person under this Agreement:

Neither Contractor nor any Key Person of Contractor shall delegate performance of Services any Key Person is required to perform under this Agreement to others without first obtaining Agency's written consent. Further, Contractor shall not, without first obtaining OST's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide OST with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests OST to approve a re-assignment or transfer of a Key Person, OST shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual OST approves as a replacement for a Key Person is deemed a Key Person under this Agreement.

### **Part IV. Payment Provisions.**

The compensation for goods and Services accomplished under this Agreement and its respective WOCs will be assigned in each WOC based on the hourly rates and fees described below:

*-Enter rates and fees once established.*

Payment will be made for completion of performance or progress on tasks and deliverables in conformance with this Agreement and the WOC requirements and all applicable standards. The method of compensation will be determined by OST for each WOC and may be based on any of the following methods (may include more than one method):

- a. Fixed price for all Services; fixed price per deliverable; fixed price per milestone;
- b. Time and materials, up to a maximum not to exceed WOC amount; or
- c. Any combination of the foregoing methods.

- A. Interim progress payments may be made to Contractor over the period of the Agreement and its respective WOC(s) upon receipt of the Contractor's detailed billing statement. OST reserves the right to request, in writing, full itemization and receipts for, but not limited to, any or all labor and/or direct costs billed by the Contractor. Contractor shall provide receipts within five (5) business days of request. Payment will not be released until all requested receipts have been received from the Contractor. All invoices and other forms of claims for payment must be submitted no more than once per month ATTN: Oregon State Treasury, 350 Winter Street NE Suite 100, Salem, OR 97301-3896 **or** emailed to **ost.accounting@ost.state.or.us**. Failure to present claims in proper form within 60 days after the end of the month in which the work is performed shall constitute a waiver on the part of Contractor to present such claim thereafter or to receive payment therefore. Any overdue payments by OST for an approved billing statement shall be in accordance with ORS 293.462.
- B. Contractor shall complete all Work as defined in each WOC to the satisfaction of the OST. If Contractor expends all time allowed under the WOC and fees incurred have reached the maximum compensation allowed under Section 2 of the WOC, but the Work and Work Products are not complete or are not satisfactory, Contractor shall complete the Work to OST's satisfaction without further compensation. OST may, by written amendment to the Contract, increase the maximum compensation payable under this Contract for any substantial, approved increase in the scope, character, schedule or complexity of services as outlined in this Exhibit A. Contractor may petition the OST for such an amendment, or the OST may initiate the action on its own. Any amendment must receive all necessary State approvals prior to commencement of any such work by the Contractor.
- C. OST reserves the right to withhold final payment equal to ten percent (10%) of the total contract amount until all required Work is completed and accepted by the OST.
- D. OST shall make final payment of any balance due Contractor promptly upon verification of completion and acceptance of the Work by OST. OST, or its duly authorized agents, may audit Contractor's records prior to payment of the final billing.
- E. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Agreement, deliver to OST a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that OST is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. OST may withhold payments to Contractor pending OST's receipt from Contractor of the applicable, completed and signed form. If OST does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to OST that Contractor's information on the form provided is incorrect, OST will withhold as federal income tax 30% of all amounts OST owes to Contractor under this Contract.
- F. Funds Available and Authorized; Payments. Contractor understands and agrees that OST's payment of amounts under this Agreement is contingent on OST receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow OST, in the exercise of its reasonable administrative discretion, to make payments under this Agreement.

**Part V. Travel and Other Expenses.**

OST shall not reimburse Contractor for any travel or other expenses under this Agreement.

**EXHIBIT B  
INSURANCE REQUIREMENTS**

**INSURANCE REQUIREMENTS:**

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

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Contract including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

**PROFESSIONAL LIABILITY :**

Required by Agency  Not required by Agency.

**COMMERCIAL GENERAL LIABILITY:**

Required by Agency  Not required by Agency.

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to OST. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

Required by Agency  Not required by Agency.

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$2,000,000 for bodily injury and property damage.

**ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, the Office of the Oregon State Treasurer, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract.

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall 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 OST's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to OST Certificate(s) of Insurance for all required insurance before delivering any goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, the Office of the Oregon State Treasurer, its officers, employees and agents as a Certificate holder and as Endorsed Additional Insured, specify that Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance OST has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

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

**INSURANCE REQUIREMENT REVIEW:**

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

**EXHIBIT C  
SAMPLE WORK ORDER CONTRACT**

**STATE OF OREGON  
OREGON STATE TREASURY**

**WORK ORDER CONTRACT #  
PRICE AGREEMENT #**

This Work Order Contract No. \_\_\_\_ (the "WOC") to Price Agreement No. (the "Agreement") is entered into by and between the State of Oregon ("State") acting by and through its Office of the Oregon State Treasurer hereinafter referred to as "OST", and \_\_\_\_\_ hereinafter referred to as "Contractor".

**1. Work Order Contract Criteria**

This WOC shall become effective on the date this WOC has been fully executed by every party. Unless extended or terminated earlier in accordance with its terms, this WOC shall terminate when OST accepts Contractor's completed performance or on \_\_\_\_\_, whichever occurs first. WOC termination shall not extinguish or prejudice OST's right to enforce this WOC with respect to any default by Contractor that has not been cured.

**2. Work Order Contract Amount**

The maximum, not-to-exceed compensation payable to Contractor under this Work Order Contract is \$\_\_\_\_\_,. Payments for goods and Services shall be made in accordance with the terms of the Agreement following OST's review and approval of detailed invoices submitted by Contractor and OST's acceptance of the goods and Services.

**3. Statement of Work**

**4. WOC Amendments**

OST may amend this WOC to, among other revisions, extend its term or modify the compensation, to delete services or to add any services that are within the statement of work, if any, or any combination of the foregoing. The parties may not waive, supplement or amend the terms of the Agreement, in any manner whatsoever, except by written amendment signed by all parties and by obtaining all necessary State of Oregon approvals.

**5. Termination**

This WOC may be terminated in whole or in part by OST immediately upon written notice to Contractor.

**6. Representations**

Except as expressly described above, all other terms and conditions of original Agreement #\_\_\_\_ are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Work Order Contract and with the same effect as though made at the time of this Work Order Contract.

**CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

Certification: By signature on this WOC for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is 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 and ORS chapters 118, 314, 316, 317, 318, 321 and 323, the elderly rental assistance program under ORS 310.630 to 310.706, local taxes administered by the Department of Revenue under ORS 305.620 and all applicable tax laws of any political subdivision of this state.

**AS AGREED:**

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Authorized by: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**OREGON STATE TREASURY**

Authorized by: \_\_\_\_\_  
Date \_\_\_\_\_