**STATE OF OREGON**

**CONTRACT FOR GOODS**

This Contract for Goods and related services (“Contract”) is between the State of Oregon, acting by and through its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Agency”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and is effective on the Effective Date. Agency and Contractor are the parties to this Contract.

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| --- | --- |
| Contractor’s Contract Administrator for this Contract is:Contract Administrator Name and Title\*\*Address\*\*City, State ZIPPhone: (xxx) xxx-xxxx Fax: (xxx) xxx-xxxxanyname@yahoo.com | Agency’s Contract Administrator for this Contract is: Contract Administrator Name, TitleAgency-Division\*\*Address\*\*City, State ZIPPhone: (xxx) xxx-xxxx Fax: (xxx) xxx-xxxxanyname@oregon.gov |

Agency or Contractor may change its Contract Administrator by providing the other notice in compliance with Section 18.9 of this Contract.

**RECITALS**

A. Agency needs to purchase \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Goods”) and to obtain installation, training, maintenance and support services (“Services”).

B. Contractor is willing to provide Goods to and perform the related Services for Agency.

**AGREEMENT**

**The parties agree as follows:**

The parties agree that the following terms and conditions will govern the purchase of the Goods and the provision of training, maintenance and support services to Agency by Contractor.

1. **Contract Term; Option to Renew.** The “Effective Date” of this Contract is the later of (i) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or (ii) the date this Contract has been fully executed by each party and approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract terminates \_\_\_\_\_\_ (\_\_) years from the Effective Date (“Initial Term”). The termination of this Contract will not extinguish or prejudice Agency’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

Agency may request extensions of this Contract for additional terms upon 60 Calendar Days prior notice to Contractor. If agreed, the parties will amend the Contract as set forth in Section 32.

1. **Contract Documents and Definitions.** This Contract consists of the following documents, which are listed in the order of precedence. In the event of a conflict between any of the provisions in this document or any of the exhibits or attachments, the parties shall resolve the conflict applying the terms in the following order:
2. this Contract less all exhibits controls in the event of a conflict; then,
3. Exhibit D (Software License, if applicable)
4. Exhibit E (Maintenance and Support Agreement)
5. Exhibit A (Description of Goods and Related Services);
6. Exhibit B (Rates and Discounts)
7. Exhibit C (Insurance)

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

**Definitions.** For the purposes of this Contract, the following terms have the following definitions:

“Business Days” means Monday through Friday, 8:00 am to 5:00 pm Pacific Time, excluding State of Oregon holidays.

“Calendar Days” means contiguous days.

“Goods” means all the goods, supplies, and materials described on Exhibit A attached hereto.

“Services” means the warranty, maintenance and support services associated with the purchase of the Goods, including: installation and training as more fully described in Exhibit A.

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

1. **Delivery and Acceptance; Title.**

**3.1.** Agency shall purchase from Contractor and Contractor shall sell to Agency certain Goods and related Services, as more particularly described in Exhibit A. Contractor shall deliver the Goods F.O.B. to Agency’s location at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with all transportation and handling charges paid by Contractor. Contractor shall ship the Goods no later than the date set forth on Exhibit A or as otherwise agreed by Contractor and Agency.

**3.2.** Agency certifies that it is purchasing the Goods for its own use and not for remarketing, and that it will not assign the on-order Goods to any party other than Contractor or a Contractor affiliate without written consent of the Contractor, which shall not be unreasonably withheld.

**3.3.** Contractor accepts the risk, responsibility and liability for loss or damage to the Goods. This risk shall remain with Contractor until acceptance of the Goods by Agency in accordance with the acceptance procedures described in Section 3.5 below. However, during the period between delivery of the Goods to Agency and prior to Agency’s acceptance, Contractor shall not be responsible for loss or damage that results from Agency’s use of the Goods with a product that is not authorized by Contractor, Agency’s misuse or unauthorized modification of the Goods, improper maintenance of the Goods by Agency, or Agency’s storage or operation of the Goods in a physical or operating environment that Contractor has advised Agency is unsuitable for the Goods.

**3.4.** Contractor shall deliver and install Goods as described in Exhibit A and shall provide any component or part necessary for proper installation and operation even though that item is not specifically described in the exhibit or in any specifications.

**3.5.** **Acceptance.**

3.5.1. Agency shall commence acceptance testing on the first day following notification by Agency to the Contractor that all Goods Contractor is required to provide under this Contract have been received and installed and tested as required by this Contract. Unless otherwise agreed, Agency shall have a 30 Calendar Day period ("Acceptance Test Period") to test the functionality of the Goods to determine whether they perform in accordance with the requirements of this Contract and in accordance with the manufacturer’s official published specifications.

3.5.2. Upon completion of Acceptance Test Period, Agency shall promptly notify Contractor in writing regarding whether the Goods have passed or failed the acceptance test. If the Goods pass the acceptance test, then such notice shall be deemed “Final Acceptance.” If the Goods fail the acceptance test, written notice shall be given and include the specific reason(s) for the failures.

3.5.3. In the event the Goods fail the acceptance test, Agency, at its sole option, may return the Goods to Contractor and Contractor shall provide a full refund including any shipping and handling charges, or with the consent of the Contractor. Agency may allow Contractor a set period of time in which to modify or repair the Goods, at no additional cost to Agency, to make the Goods conform to the requirements of this Contract and the manufacturer’s published specifications ("Modified to Conform"). If the Goods are modified to conform, upon completion of the modification(s), Agency shall recommence acceptance testing pursuant to the terms and conditions of this provision.

3.5.4. Unless otherwise agreed, Contractor’s performance of Services is accepted upon Contractor’s complete performance of the Services and Agency’s approval of the Services.

**3.6. Title.** Title for the Goods passes to Agency in accordance with ORS 72.4010.

**3.7** **Software Licenses.**

3.7.1. Subject to the terms and conditions of any Software License Agreement, a copy of which is attached hereto as Exhibit D, Contractor hereby grants to Agency, or shall ensure that Agency receives, a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free license to use the operating system software (and documentation and associated manuals) (the “Software”) for the Goods.

3.7.2. Third Party Intellectual Property. In the event the Goods include Third Party Intellectual Property and unless otherwise agreed, Contractor shall ensure that Agency receives a license to use the Software sufficient to fulfill the business objectives, requirements and specifications identified in this Contract. Agency shall have the right to review the proposed license agreement and negotiate terms with the licensor; upon agreement to the terms, Agency will be bound by such license agreement. If Agency and licensor cannot reasonably agree to terms, Agency, in its sole discretion, may return the Goods and Software to Contractor (without incurring any termination liability), and Contractor shall provide a full refund including any shipping and handling charges.

1. **Compensation.**

**4.1. Invoices.** Upon Final Acceptance of the Goods, Contractor shall submit invoices to Agency’s Contract Administrator, no more frequently than once per month for accepted Goods and Services. The invoices must describe all Goods and Services delivered or performed and explain all expenses that this Contractor requires Agency to pay and for which Contractor claims reimbursement.

**4.2. Payments.** Agency shall pay Contractor the amounts set forth in Exhibit A, subject to the Rates and Discounts set forth in Exhibit B, for delivery and installation of the Goods, training services, and for maintenance and support services to be provided by Contractor. The purchase price shall be paid to Contractor within 30 Calendar Days following the date of Final Acceptance of the Goods or Services or the date the invoice is received, whichever is later. After 45 Calendar Days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8% per annum) on the outstanding balance. All payments are subject to ORS 293.462.

**4.3. Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor except as authorized in this Contract. Any authorized travel expenses must comply with the Oregon Accounting Manual.

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

1. **Representations and Warranties.**  Contractor hereby represents and warrants to Agency:

**5.1. General Warranties.** Contractor represents and warrants to Agency that:

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

5.1.2. This Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms; and

5.1.3. Contractor shall perform the installation, training and maintenance services set forth in this Contract in accordance with the highest professional standards prevailing in Contractor’s profession and in compliance with the requirements of this Contract; and

5.1.4. Contractor owns or has the right to sell the Goods that are the subject of this Contract; and

5.1.5. Contractor shall, at all times during the term of this Contract, be qualified and competent, and shall maintain in effect any necessary licenses related to its performance under this Contract; and

5.1.6. For a period of no fewer than six calendar years preceding the Effective Date, Contractor (to the best of Contractor’s knowledge, after due inquiry), has faithfully complied with:

* All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
* Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor;
* Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
* Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

**5.2. Warranties.** Contractor hereby warrants to Agency that the Goods shall be free and clear of any liens or encumbrances and shall be new and unused (and, if applicable, the current model) and shall carry full manufacturer warranties, and shall be delivered with complete documentation. Contractor warrants that all Goods delivered to Agency shall be free from defects in labor, material and manufacture, shall be in compliance with the specifications set out in this Contract, and shall be suitable for the operating environment in which it is installed. Contractor shall furnish the details of both Contractor's and manufacturer's warranties on materials and workmanship.

**5.3. Software Warranties.** Contractor hereby grants to Agency the following Software warranties:

5.3.1. Agency shall receive a license to use the Software, free from any adverse claims asserted by third parties; and

5.3.2. The Software licensed to Agency shall conform to its published documentation and such complete documentation will be delivered to Agency with the Software.

**5.4. Warranties are Cumulative.** Contractor’s warranties provided in this Section 7 are in addition to and not in lieu of any other warranties provided elsewhere in the Contract. All warranties provided for in this Contract shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Agency.

**6. Independent Contractor Certification; Responsibility For Taxes And Withholding**

**6.1. Independent Contractor.** Contractor hereby certifies that it is an independent contractor and it shall provide all Goods and perform all related Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Goods and Services and (ii) to evaluate the quality of the Goods and Services; however, Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of the provision of the Goods or its performance under this Contract.

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

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

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

1. **Warranty; Maintenance and Support.**
	1. **Warranty.** Contractor hereby assigns to Agency, and Agency shall have the benefits of, any and all manufacturers' or Contractors' warranties, representations, indemnities and service agreements for the Goods to the extent assignable by Contractor, and to the extent such warranties, representations, indemnities and service agreements are not assignable by Contractor, Contractor agrees that State or Agency may assert or enforce in its own name or in the name of Contractor any right Contractor may have to enforce such warranties, representations, indemnities and service agreements.
	2. **Maintenance and Support.**  Contractor represents that following the date of Final Acceptance and expiration of the warranty, the Goods are eligible for long-term maintenance and support provided by either Contractor, the manufacturer of the Goods or a subcontractor of either. Agency and Contractor may enter into a long term maintenance and support agreement substantially similar to the Maintenance and Support Agreement attached hereto as Exhibit E , provided, that at a minimum, such maintenance and support agreement will require the entity providing support to be available 24 hours a day, seven days a week, and to respond to Agency’s request for support for the Goods within one hour. Such one hour response time shall require the entity providing maintenance and support to return Agency’s phone call requesting support within 30 minutes, and in the case of Goods problems requiring service, to be at State’s site within one (1) hour maximum.

In the event that a subcontractor provides maintenance and support, the subcontractor must be certified or authorized by the original equipment manufacturer to perform maintenance and service on the Goods. All subcontractors must be certified or authorized by the original equipment manufacturer to perform maintenance and service on the Goods.

* 1. **Software Maintenance and Support.** Either Contractor or Software provider will (i) furnish such materials and services as are necessary to correct any defects in the Software and maintain the Software in good working order in accordance with published specifications, and (ii) provide Agency with any enhancements, updates, replacements, revisions, additions or conversions to the Software, including appropriate documentation, training and on-site installation support.
1. **Confidential Information.**
	1. **Confidential Information.** Contractor acknowledges that it and its employees, officers, directors, agents or subcontractors may, in the course of performing under this Contract, be exposed to or acquire information that is confidential to Agency or Agency’s clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Contractor may come into contact with or that is obtained by Contractor in the performance of this Contract is confidential information of Agency (“Confidential Information”). Contractor shall and shall cause its employees and subcontractors or agents to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by Contractor and can be shown to have had no access to the Confidential Information.
	2. **Non-Disclosure.** Contractor shall hold, and shall cause its employees, subcontractors and agents to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the performance under this Contract to Agency hereunder, and shall advise its employees, subcontractors and agents of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency’s request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

**8.3. Confidentiality Policies.** Contractor shall, upon Agency’s request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency’s review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.

**8.4. Injunctive Relief.** Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, may cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

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

9. Indemnification by Contractor.

**9.1. Claims.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs (including attorneys’ fees) and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, violation of employment laws or its certification as an independent contractor, intentional, willful, or wanton wrongful acts, and acts outside the scope set forth in this Contract.

**9.2. Infringement Claims.** In addition and without limiting the generality of the above, Contractor shall defend at Contractor's sole expense, and save, hold harmless, and indemnify the State, Agency, and all of their officers, employees and agents from and against any and all costs, damages, attorneys' fees, and any and all costs resulting from, relating to, or arising out of a claim ("Infringement Claim") that any aspect of the Goods or Software furnished under this Contract infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable proprietary right of any third party. Agency shall give Contractor notice of any Infringement Claim promptly after becoming aware of such Infringement Claim. If any Goods or Software furnished by Contractor, are in Contractor's opinion likely to become the subject of an Infringement Claim, then Contractor may, at its option and expense, procure for Agency the right to continue using the allegedly infringing materials or replace or modify the materials so that they become non-infringing; provided that the replacement or modified version meets Agency's original specifications to the satisfaction of Agency.

If the State or Agency is prevented from exercising its rights under this Contract based on any Infringement Claim or court order arising from any Infringement Claim, Contractor shall at its expense, procure for Agency, as applicable, the right to continue using the allegedly infringing Goods or replace or modify the allegedly infringing Goods or Software so that it becomes non-infringing; provided that the replacement or modified Goods or Software meets the specifications set forth in this Contract to the satisfaction of Agency. If the foregoing remedies are not available, then Agency may return the allegedly infringing Goods and Software, in which event Contractor shall refund Agency's payment for the allegedly infringing Goods and Software in full.

**9.3. Legal Counsel.** If Contractor is required to defend the State of Oregon or Agency or their officers, employees or agents under Sections 10.1 or 10.2, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

**9.4. Damages to State Property and Employees.** Contractor is liable for all Claims or Infringement Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract.

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

**10. Assignment of Antitrust Rights.**  CONTRACTOR IRREVOCABLY ASSIGNS TO STATE OR AGENCY 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’SOR AGENCY’S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR’S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO STATE OR AGENCY, 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, INCLUDING, AT STATE’S OR AGENCY’S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

1. **Limitation of Liability.**
	1. **Limitation of Contractor’s Liability.** Contractor’s liability for claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever (collectively, “Liabilities”) is limited as follows:
		1. Contractor’s Liabilities related to breach of contract, including any representation, warranty or covenant in this Contract is limited to one time the value of the Contract.
		2. Contractor’s Liabilities that the Solution or Services infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, “Intellectual Property Rights”) of any third party, is limited to $\_\_\_\_\_\_\_\_\_\_\_\_\_.
		3. Contractor’s Liabilities related to personal injury or death, damage to real property and damage to tangible or intangible personal property, including the State’s or employee’s property, is limited to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
		4. Contractor’s Liabilities related to breach of confidentiality or non-disclosure, breach of security or privacy provisions, or loss of data is limited to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
		5. Contractor’s Liabilities covered by service credits or liquidated damages are limited to the agreed upon service credit or liquidated damage amount.
	2. Limitation on Agency Liability. Any and all indemnity or liability obligations of the State or Agency under this Contract, are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300).
	3. **Consequential Damages:** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.
2. **Insurance Requirements.**  Contractor shall obtain and maintain insurance as set forth in Exhibit C.
3. Default; Remedies; Termination.

**13.1 Default by Contractor**.

13.1.1 Contractor will be in default under this Contract if:

* 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
* 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 14 Calendar Days after Agency’s notice or such longer period as Agency may specify in such notice; or
* Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to provide the Goods or perform the Services under this Contract within the time specified herein or any extension thereof, and such breach, default or failure is not cured within 14 Calendar Days after Agency's notice, or such longer period as Agency may specify in such notice.

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

* Termination of this Contract under Section 13.3; or
* Withholding all monies due for Goods or Services that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or
* Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
* Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty.

13.1.3 **Remedies Cumulative**. The remedies set forth in this Section are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 13.1, then Contractor will be entitled to the same remedies as if this Contract was terminated for convenience pursuant to Section 13.2.1.

**13.2 Default by Agency**.

13.2.1 Agency will be in default under this Contract if:

* Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 Calendar Days after Contractor’s notice or such longer period as Contractor may specify in such notice; or
* Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 Calendar Days after Contractor’s notice or such longer period as Contractor may specify in such notice.

13.2.2 **Contractor’s Remedies**. In the event Agency terminates this Contract under Section 13.3.1, or Agency is in default under Section 13.2, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 13.3.3, Contractor’s sole monetary remedy will be a claim for the balance due, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event will Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay immediately any excess to Agency upon written demand.

**13.3. Termination.**

13.3.1 **Agency’s Right to Terminate at its Discretion.** Agency may terminate this Contract:

* Upon 30 Calendar Days’ prior written notice by Agency to Contractor;
* Immediately upon written notice by Agency to Contractor if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Goods; or
* Immediately upon written notice by Agency to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency’s purchase of the Goods under this Contract is prohibited or Agency is prohibited from paying for such Goods from the planned funding source.

13.3.2 **Agency’s Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract, immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, if Contractor is in default under Section 13.1.

13.3.3 **Contractor’s Right to Terminate for Cause.** Contractor may terminate this Contract immediately upon written notice to Agency, or at such later date as Contractor may establish in such notice, if Agency is in default under Section 13.2.

**13.4. Return of Property**. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency’s property that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time.

**13.5. Effect of Termination**. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract , unless Agency expressly directs otherwise in such notice of termination.

14. Compliance with Law.

**14.1. Compliance with Law Generally.** Contractor shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract, as may be modified or adopted from time to time. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency’s performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this 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 products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

**14.2**. **Compliance with Oregon Tax Laws**.

14.2.1. Contractor shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state, as defined in Section 6.1.

14.2.2. Any violation of this Section constitutes a material breach of this Contract. Further, any violation of Contractor’s warranty in Section 6.1 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

* Termination of this Contract, in whole or in part;
* Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor without penalty; and
* Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Contractor's breach of the tax provisions of this Contract.

14.2.3. These remedies are cumulative to the extent the remedies are not inconsistent, Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

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

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

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

1. Governing Law; Dispute Resolution; Venue and Jurisdiction.
	1. **Governing Law**. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
	2. **Dispute Resolution.** Any dispute between the parties under this Contract that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes. Neither party waives its right to a jury trial or right to participate in class, collective, or representative claims.
	3. **Venue and Jurisdiction**. Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.
2. **Safety and Health Requirements.** Contractor warrants that goods and services provided under this Contract 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.
3. **Safety Data Sheet.** Contractor shall provide Agency with a Safety Data Sheet for any goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such goods.
4. **Miscellaneous Provisions.**
	1. **Records Maintenance; Access**. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract (“Records”) in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other Records that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records and other Records for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
	2. **Recycling.** Contractor shall, to the maximum extent economically feasible in the performance of the 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)).
	3. **Foreign Contractor**. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.
	4. **Force Majeure**. Neither Agency nor Contractor may be held responsible for delay or default caused by an event beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
	5. **Assignment/Subcontractors/Successors.** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of Agency. No such written approval shall relieve Contractor of any obligations under this Contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to Agency as if no such transfer or subcontract had occurred. The provisions of this Contract are binding upon and inure to the benefit of the parties to the Contract and their respective successors and permitted assigns.
	6. **Payment of Contractor Claims.** If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this Contract, Agency may, but is not obligated to, pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. The payment of a claim by Agency pursuant to this section shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.
	7. **Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 19.7, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor’s duties of confidentiality, ownership and license of intellectual property, confidentiality and non-disclosure, Contractor’s representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, intended beneficiaries, waiver, headings, and integration.
	8. **Time is of the Essence**. Contractor agrees that time is of the essence under this Contract.
	9. **Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 19.9. Any communication or notice so addressed and mailed is effective five Business Days after mailing. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.
	10. **Intended Beneficiaries**. Agency 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 may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
	11. **Severability**. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
	12. **Merger Clause; Waiver**. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract will bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.
	13. **Amendments**. Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the applicable parties and has been approved as required by applicable law.
	14. **Counterparts**. This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.
	15. **Export Compliance.** Agency acknowledges that in various countries, laws and regulations governing the export of computer products and technology may prohibit use, sale or re-export of such products or technology if Agency knows or has reason to know that such products and technology are for use in connection with the design, development, production, stock piling or use of nuclear, chemical or biological weapons or missiles, and in some countries (e.g., China) for certain conventional military end-uses. If Agency sells or transfers to another person or entity title in or right to use any part of products or other materials supplied by Contractor, Agency will ensure that all applicable export restrictions of the nature described in this section are observed.
	16. **Oregon False Claims Act.** Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.
	17. **Certifications**. The individual signing on behalf of Contractor hereby:
* Certifies and swears under penalty of perjury to the best of the individual’s knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor’s payment of taxes, and to the best of her/his knowledge, that Contractor is not in violation of any Oregon tax laws and that for a period of no fewer than six (6) calendar years preceding the Effective Date of this Contract, Contractor faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.380(4), 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;
* Certifies that, to the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;
* Certifies that Contractor has no undisclosed liquidated and delinquent debt owed to the State or its agencies;
* Certifies that Contractor is an Independent Contractor for all purposes herein; and
* Certifies that Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>.
* **Nondiscrimination in Employment.** Contractor certifies, in accordance with ORS 279A.112, that it has in place a policy and practice of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class , as defined by ORS 279A.112 (2)(1)(b). As a material condition of this Contract, Contractor must maintain, throughout the duration of this Contract, a policy and practice that comply with House Bill 3060, including giving employees written notice of the Contractor’s policy and practice.

Contractor: State of Oregon, acting by and through

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

FEID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Approved for legal sufficiency

 pursuant to ORS 291.047 and

 OAR 137-045-0030

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Assistant Attorney General

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

**EXHIBIT A**

**DESCRIPTION OF GOODS AND RELATED SERVICES**

**EXHIBIT B**

**RATES AND DISCOUNTS**

**EXHIBIT C**

**INSURANCE REQUIREMENTS**

Contractor shall obtain at Contractor’s expense the insurance specified in this Exhibit C prior to performing 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 State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY

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

COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Agency. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. 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

Automobile Liability Insurance covering Contractor’s business use including coverage for 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. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

ADDITIONAL INSURED

All liability insurance, except for Workers’ Compensation required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor’s insurer(s).

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 Agency’s acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF 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) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. As proof of insurance, Agency has the right to request copies of insurance policies and endorsements 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 Agency 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 Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency’s representatives responsible for verification of the insurance coverages required under this Exhibit C.

**EXHIBIT D**

**SOFTWARE LICENSE AGREEMENTEXHIBIT E**

**MAINTENANCE AND SUPPORT AGREEMENT**