

State of Oregon



**Attachment A
PRICE AGREEMENT
WITH**

**[ergoCentric Inc.]
FOR
[Office Seating]
[Price Agreement PA 8312]**

This Price Agreement ("Agreement") is between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services office ("DAS PS") and [ergoCentric Inc.], an [Ontario, Canada] Corporation ("Contractor").

Section 1 – Agreement

1.1 Parties

1.1.1 The only parties to this Agreement are Contractor and DAS PS.

1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A ("Goods") by issuing: i) an ordering instrument that creates and becomes part of a separate contract ("Price Agreement"); ii) a DAS PS approved Purchase Order form as shown in Exhibit B; or iii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase Order Transactions System ("SPOTS") Card, each of which results in a separate contract for Goods ("Contract"). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. DAS PS is an intended beneficiary of each Contract created by an ordering instrument.

1.1.3 As used in this Agreement, "Authorized Purchaser" means:

- Any Agency of the State of Oregon
- Any participant in the Oregon Cooperative Purchasing Program ("ORCPP")

1.2 Process

1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:

- a) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the DAS PS approved purchase order form. Exhibit B is a sample DAS PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a SPOTS card. Unless expressly authorized by DAS PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.
- b) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.

- c) To be effective, the ordering instrument must specify all of the following:
 - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
 - ii) The specific Goods and quantity of each item ordered.
 - iii) The net price.
 - iv) The requested delivery schedule.
 - v) The delivery location(s).
 - vi) The invoicing address.
 - vii) The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order(s) or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates. Contractor may, but is not required to accept an ordering instrument that requests delivery schedule of less than any minimum lead time (if any) specified in Exhibit A.

1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within 5 business days after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail or facsimile if that information is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, "Price Agreement" means this Agreement.

1.2.6 DAS PS is not obligated or liable under an ordering instrument unless DAS PS is purchasing Goods as the Authorized Purchaser.

1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument.

1.2.8 Contractor shall reject an ordering instrument from any entity that is not an Authorized Purchaser under this Agreement. Contractor may verify that Authorized Purchasers are ORCPP participants at the following

address: <http://www.oregon.gov/DAS/EGS/DAS/PS/ORCPP/orcppMemberList.pdf>

- 1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

1.3 Prices

- 1.3.1 Except as provided in this Section, during the Term of this Agreement, Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A.
- 1.3.2 Contractor and Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.
- [1.3.3 Contractor may request unit price increases from DAS PS no more often than annually, commencing after the signature and acceptance of the of the Manufacturer. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data or any other relevant manufacturer or industry data substantiating the increase. DAS PS may also use the IBIS World. However, a price increase may not produce a higher profit margin for Contractor than at the beginning of the initial term of this Agreement.

1.4 VCAF and VSR

Contractor shall remit to DAS PS a Vendor Collected Administrative Fee (VCAF) and Volume Sales Reports (VSR) as described in Exhibit C.
exhibit

1.5 Term of Agreement

- 1.5.1 The initial term of this Agreement begins on the date this Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the "Effective Date") and ends on the 5 year anniversary of the Effective Date unless sooner terminated or extended as provided in this Agreement. DAS PS has the option to extend this Agreement for 5 consecutive one year terms. DAS PS will exercise the option to extend, if at all, by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then-current term. The initial term and all extension terms are collectively the "Term" of this Agreement.

- 1.5.2 After this Agreement is terminated, Contractor shall not accept new ordering instruments.
- 1.5.3 Termination of this Agreement also terminates ordering instruments in which the Contractor is not legally required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as a blanket purchase order (an order that may contain detail of the Goods, but actual sale of Goods is made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.4 Except as provided in Section 1.5.3, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument accepted before termination of this Agreement.
- 1.5.5 DAS PS may terminate this Agreement upon 30 calendar days written notice to Contractor for any or no reason.

1.6 Insurance

Contractor shall obtain insurance specified in Exhibit D and shall maintain the insurance until all Contracts under this Agreement are terminated.

1.7 Miscellaneous

- 1.7.1 Choice of 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.
- 1.7.2 Designation of Forum and Consent to Jurisdiction. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 Amendments. No amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 Transfer. Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of DAS PS. DAS PS's consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided their permitted legal successors and assigns.

- 1.7.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument. Notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 **Force Majeure.** Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement.

In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of Contractor's obligations with all reasonable diligence. If necessary, the period for performance under this Agreement will be extended to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

- 1.7.7 **Entire Agreement.** This Agreement, together with the attached Exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.
- 1.7.8 **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties, or notices to be given under this Agreement, are effective only if given in writing by personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to Contractor or DAS PS at the address or number set forth below in Sections 4 and 5, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice so addressed and mailed is deemed given five (5) days after mailing. Any communication or notice delivered by facsimile is deemed given on the day the transmitting machine generates a receipt of a successful transmission of the notice, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours. To be effective against DAS PS, any notice transmitted by facsimile must be confirmed by telephone notice to DAS PS's Contract Administrator. Any communication or notice given by personal delivery or express courier is deemed given immediately upon such delivery, provided such delivery is made to the person indicated below.

The Contract Administrators are identified in Sections 4 and 5, respectively.

- 1.7.9 No Third Party Beneficiaries. DAS PS 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 will 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.
- 1.7.10 Waiver. The failure of DAS PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.
- 1.7.11 Certification of Compliance with Tax Laws. 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, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.
- 1.7.12 DAS PS's performance under this Agreement is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated into this Agreement by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- 1.7.13 Contractor shall retain, maintain, and keep accessible all records relevant to the this Agreement (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this Section, Contractor shall permit DAS PS and its duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

Section 2 – Standard Terms for Contracts Under This Agreement

The provisions of this Sections 2 are incorporated into each Contract created under this Agreement.

- 2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.
- 2.2 PAYMENT:** Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. **AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT.** Subject to Authorized Purchaser's acceptance of goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.
- 2.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum). Any overdue payments to Contractor by DAS PS are subject to ORS 293.462.
- 2.4 PAYMENT ADDRESS:** Payments must be sent to the address specified in the Contractor's invoice.
- 2.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:
- 2.5.1 Price Agreement number.
 - 2.5.2 Ordering instrument number.
 - 2.5.3 Goods ordered.
 - 2.5.4 Date delivered.
 - 2.5.5 Volume or quantity of Goods delivered.
 - 2.5.6 The price per item of Goods.
 - 2.5.7 The total amount invoiced.
 - 2.5.8 The address to which payment is to be sent.
- 2.6 PRICES:** Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.

2.7 CANCELLATION; INSPECTIONS AND ACCEPTANCE: The Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. The Authorized Purchaser has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). Notice of rejection must also specify when cure will be allowed.

2.7.1 The Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, Contractor shall deliver substitute conforming Goods within 10 calendar days of receipt of notice of rejection.

2.7.2 If the Goods are rejected or acceptance is revoked, Contractor shall refund all Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.7.3 Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.8 REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS:

2.8.1 **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.

2.8.2 **DEBT:** Contractor represents and warrants that Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

2.8.3 **NONDISCRIMINATION IN EMPLOYMENT.** Contractor certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Contract, to maintain the policy and practice in force during the entire Contract term.

- 2.8.4 WARRANTY ON MATERIALS, DESIGN, MANUFACTURE:** Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit E to the Price Agreement.
- 2.8.5 WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with standards prevalent in the industry.
- 2.8.6 WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods which is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.
- 2.8.7 WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.
- 2.8.8 MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser at time of delivery at no charge.
- 2.8.9 WARRANTIES CUMULATIVE:** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

- 2.9.1** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.
- 2.9.2 STATUTORY TERMS:** Authorized Purchaser's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall,

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

2.9.3 NONCOMPLIANT GOODS: In the event of a conflict between the specifications in this Contract and applicable federal or State law, the law prevails. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Authorized Purchaser.

2.9.4 RECALLED GOODS OR COMPONENTS: In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- a) Cancel any portion of the ordering instrument.
- b) Reject the Goods.
- c) Revoke its acceptance of the Goods.
- d) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- e) Terminate the Contract.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and reimburse Authorized Purchaser for any payments made.

2.10 FOREIGN CONTRACTOR: If the amount of this exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. Authorized Purchaser may withhold final payment under this Contract until Contractor has met this requirement.

2.11 MATERIAL SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (MSDS) as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Price Agreement which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.

- 2.12 TIME IS OF THE ESSENCE:** Time is of the essence for performance of Contractor's performance obligations under this Contract.
- 2.13 FORCE MAJEURE:** Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. 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. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract.
- 2.14 WORKERS COMPENSATION INSURANCE:** All employers, including Contractor, that employ subject workers who work under the 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(2). Contractor shall require and ensure that each of its subcontractors, if any, complies with these requirements.
- 2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS:** If Authorized Purchaser is an agency of the State of Oregon, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.
- 2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:**
- 2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.
- 2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser 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 Contract, except as a self-employed individual.

2.17 INDEMNIFICATION:

2.17.1 CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE AUTHORIZED PURCHASER, THE STATE OF OREGON AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW) (COLLECTIVELY, "CLAIM") WHICH MAY BE BROUGHT OR MADE AGAINST ANY AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICIALS, EMPLOYEES AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF CONTRACTOR, ITS EMPLOYEES, AGENTS, RELATED TO THIS CONTRACT, (II) ANY ACT OR OMISSION BY CONTRACTOR THAT CONSTITUTES A MATERIAL BREACH OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS. AUTHORIZED PURCHASER OR STATE SHALL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF ANY CLAIM OF WHICH AUTHORIZED PURCHASER OR STATE BECOMES AWARE. CONTRACTOR'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF AUTHORIZED PURCHASER, OR (II) AUTHORIZED PURCHASER'S MODIFICATION OF GOODS WITHOUT CONTRACTOR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

2.17.2 HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, 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'S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS,

EMPLOYEES OR AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

2.18 BREACH:

2.18.1 BY CONTRACTOR: Contractor breaches this Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
- c) Contractor commits any breach of any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the breach within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the breach is curable by Contractor.

2.18.2 BY AUTHORIZED PURCHASER: Authorized Purchaser breaches this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any breach of any covenant, warranty, or obligation under this Contract and such breach is not cured within ten (10) business days after delivery of Contractor's notice of breach or such longer period as Contractor may specify in such notice.

2.19 REMEDIES:

2.19.1 AUTHORIZED PURCHASER'S REMEDIES: If Contractor is in breach under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser 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:

- a) Termination of the Contract as provided in Section 2.20.1;

- b) Withholding all monies due for invoiced Goods that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;
- d) Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Good to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated only after the Contractor has been given: i) written notice of the type and amount of the debt, the intention of the State to use administrative offset or garnishment to collect the debt, and an explanation of the debtor's rights under applicable law; and ii) the opportunity to make a written agreement to repay the debt; and
- e) exercise of its right of setoff, or garnishment if applicable, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.
- f) These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 CONTRACTOR'S REMEDIES: If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in breach under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.20 TERMINATION:

- 2.20.1 BY MUTUAL CONSENT:** This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.
- 2.20.2 RIGHTS OF AUTHORIZED PURCHASER.** Authorized Purchaser may, at its sole discretion, terminate this Contract for convenience with thirty (30) calendar days written notice. Authorized Purchaser may

terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by Authorized Purchasers under the Price Agreement is prohibited, or Authorized Purchasers are prohibited from paying for such Goods from the planned funding sources; or (c) Contractor is in breach of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

- 2.20.3 RIGHTS OF THE CONTRACTOR:** Contractor may terminate this Contract with a minimum ten (10) calendar days written notice to Authorized Purchaser, if Authorized Purchaser is in breach of this Contract as described in Section 2.18.2.
- 2.21 ACCESS TO RECORDS:** Contractor shall retain, maintain, and keep accessible all records relevant to the this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this Section, Contractor shall permit SPO, the Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.
- 2.22 NOTICES:** All notices required under this Contract must be in writing and addressed to the party's authorized representative. For Authorized Purchasers, the authorized representative is identified in the ordering instrument. Contractor's authorized representative is Contractor's Contract Administrator identified in the Price Agreement. Mailed notices will be deemed received five (5) business days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. If a notice is sent by facsimile, upon receipt by the party giving the notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile machine and number. Personal delivery is effective upon delivery.
- 2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS:** The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this

Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.24 GOVERNING LAW: This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.25 VENUE; CONSENT TO JURISDICTION:

2.25.1 STATE CONTRACT VENUE; CONSENT TO JURISDICTION:

Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 ORCPP CONTRACT VENUE; CONSENT TO JURISDICTION:

Any Claims between Contractor and an ORCPP Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract order shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Authorized Purchaser resides, or at the ORCPP Authorized Purchaser's option, within such other county as the ORCPP Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

- 2.26 SURVIVAL:** The following provisions survive termination or expiration of this contract: Sections 2.8, 2.9.4, 2.17, 2.19, 2.21, 2.24, 2.25, 2.27; Exhibit C and Section 3 of Exhibit D ("TAIL" COVERAGE).
- 2.27 SEVERABILITY:** If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- 2.28 ASSIGNMENTS, SUBCONTRACTS, AND 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 the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.
- 2.29 MERGER CLAUSE; AMENDMENT; WAIVER:** This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.
- 2.31 VCAF and VSR.** Contractor shall comply with the VCAF and VRS requirements of the Price Agreement.
- 2.32 INTENDED BENEFICIARY.** DAS PS is an intended beneficiary of this Contract. But the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.
- 2.33 ASSIGNMENT OF ANTITRUST RIGHTS.** Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the 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 the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, 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 the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts Under This Agreement

3.1 Contractor shall include with all Goods delivered all of the following items: [Dedicated Website:
ergoCentric has a dedicated website for the products approved under this Price Agreement, www.ergocentric.com/government

Warranty:

ergoCentric offers a Limited Lifetime 10 Year Warranty. The ergoCentric Warranty in effect at time of order entry shall apply, but in no event shall be less than the Limited Lifetime 10 Year Warranty. Please see following link for warranty details and additional information:

<https://www.ergocentric.com/resource-types/warranty>

Delivery:

Whether an order is for a single chair or multiple seating products, ergoCentric's order process system ensures its high-quality products are delivered on time. With a large selection of in-stock optional components, ergoCentric offers fast turnaround times to accommodate the State of Oregon's locations' requirements. Regular orders will be processed and shipped **within 10 business days**. As well, every effort is made to fill special orders within ergoCentric's regular ship times.

ergoCentric Seating Systems in partnership with its dealer(s) will manage the supply, delivery and installation of all seating to the State of Oregon. Working with the State of Oregon, ergoCentric will determine a delivery schedule to ensure minimal disruption to employees while meeting their supply requirements. ergoCentric's dedicated Customer Service and Sales team for the State of Oregon will be responsible for ensuring the smooth delivery and installation of all chairs ordered.

In addition, ergoCentric will offload chairs **fully assembled** at the State of Oregon locations. ergoCentric will unload, remove all packaging and distribute chairs as per the requirements of the State of Oregon. This saves the time and costs associated with assembling chairs while ensuring minimal disruption to employees.

All product will be left clean and in working order at the customer's location. Chairs are delivered fully assembled and are inspected and tested before they leave the dealer's site to ensure ergoCentric's high quality products fully satisfy ergoCentric's customers' expectations.

The installation crew is responsible for leaving the installation site clean and clear of all refuse, debris and recyclable materials associated with the product installation.

ergoCentric will work with the State of Oregon to meet their scheduling requirements for delivery.

Product Manuals/Training:

A user guide (chair hanging tag) is provided with every adjustable chair. The tag provides both visual and written instructions on how to use the chair's controls as well as ergonomic information for each adjustment. Additionally, assembly and disassembly instructions are included in every shipment. This information is also available on the company website.

ergoCentric provides training to its customers **at no extra charge**. Product training is offered one-on-one or in small or large groups at the Authorized Purchaser's site. The key to ergoCentric's training is to educate all users on how to adjust their chair and the benefits of these adjustments to the health of the user.

Training sessions are given by an ergoCentric employee that is fully trained or by a fully trained member of an authorized dealer when an ergoCentric employee is not available.

One-on-one training is available for all new employees or as a refresher for existing employees as requested.

Technical training is also available for changing modular parts to suit new employees or changing needs as well as small repairs and is available immediately to all customer employees requiring this type of training. A technical support technician is also available through our Area Technical Support Technician or through our local dealer network at no extra charge.

Customer Service:

ergoCentric Customer Service
Standard Hours: Monday – Friday 8:00AM – 5:00PM (Across all time zones)
info@ergoentric.com
866-438-3746

Local representation:
Mark Blake, Regional Sales Manager
mark.blake@ergoentric.com
206-396-4210

ANSI/BIFMA Standard Requirements:

All ergoCentric Seating is tested to meet or surpass North American quality standards as set by the American National Standards Institute (ANSI) and the

Business and Institutional Furniture Manufacturers Association (BIFMA). Testing is carried out by an independent certified testing facility.

Installation

ergoCentric or its authorized dealers will be fully responsible and liable for the actions of the person who assembles the Office Seating. ergoCentric or its authorized dealers will order any missing, damaged, or incorrect office seating as soon as the issues are discovered at no cost to the State of Oregon. All office seating will be installed with minimal disruption to the State of Oregon. All office seating will be installed fully assembled and ready for use.

Trial Period:

ergoCentric's chair trial program allows employees to assess current chairs standardized with the State of Oregon as well as new or different chair series and options outside of any committed contracted items at any time and at no additional cost. These demo chairs can be ordered with the required options and adjustability features needed to meet the specific requirements of employees and/or their work environment. Demo chairs are available to the customer up to two weeks, however special arrangements can be made if longer times are required.

].

Section 4 – Signature of Contractor's Duly Authorized Representative

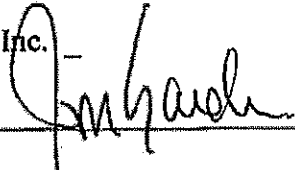
4.1 The undersigned represents:

- (a) He/she 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) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.
- (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
- (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.

Agreed:

Contractor's Name: ergoCentric Inc. _

Authorized Signature: _____



Printed Name of Authorized Signature: _ John Gardner _

Title of Authorized Signature: _ President & CEO _

Date: _ December 3 _____, 2018 _

Administrative Contact (also referred to as Contract Administrator – Type or Print):

Dan Childerhose

Telephone Number of Administrative Contact: (905) 696-6800 ext234

Fax Number of Administrative Contact: (905) 696-0899

Email Address of Administrative Contact: dan@ergocentric.com

Mailing Address of Administrative Contact:

275 Superior Blvd

Mississauga, ON Canada L2T 2L6

Section 5 – Signature of DAS PS

Agreed:

Authorized Signature: 

Under special exemption issued March 29, 2012, purchase orders are exempt from legal sufficiency approval.

Date: 12/19/18

DAS PS Contract Administrator (Type or Print):

Pam Johnson

Telephone Number: (503) 378-4731

Fax Number: (503) 373-1626

**Exhibit A
Goods**

**[include description of goods, prices and lead times]
[if separate parts are desired, Buyers may attach Exhibit A-1,
A-2 etc.]**

The pricing for this Agreement is in U.S. funds.

All Office Seating within the categories listed below:

- SMALL ERGONOMIC CHAIRS
- MEDIUM ERGONOMIC CHAIRS
- LARGE ERGONOMIC CHAIRS
- MESH ERGONOMIC CHAIRS
- GUEST & LOBBY CHAIRS
- CONFERENCE ROOM CHAIRS
- MULTI SHIFT CHAIRS
- BIG & TALL ERGONOMIC CHAIRS
- STATIONARY AND HEIGHT-ADJUSTABLE STOOLS

Discounts for each category:

Category	Discount From List Price
Small Ergonomic Chairs	53%
Medium Ergonomic Chairs	53%
Large Ergonomic Chairs	53%
Mesh Ergonomic Chairs	51%
Guest & Lobby Chairs	57.30%
Conference Room Chairs	47.50%
Multi Shift Chairs	55%
Big & Tall Ergonomic Chairs	55%
Stationary and Height Adjustable Stools	50%
Chair Options	48%

Exhibit B


	STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #		
Authorized Purchaser's Authorized Representative		Purchase Order Date	Requisition No.		
Contractor Name and Address		Authorized Purchaser's Invoicing Address			
Contractor FEIN	Price Agreement number	Authorized Purchaser's Authorized Representative Email Address			
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number			
		Delivery Schedule or Delivery Date			
Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	
<p>This Purchase Order, in addition to any exhibits or addenda attached, is placed against State of Oregon Solicitation # _____ and Price Agreement _____. The terms and conditions contained in the Price Agreement including Exhibits C, D and E, apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.</p>					
Agency's Authorized Representative to Make Purchase				Date	

Exhibit C
Volume Sales Report (VSR) / Vendor Collected
Administrative Fee (VCAF)

1) Volume Sales Report (VSR)

- a) Contractor shall submit a VSR to DAS PS no later than thirty (30) calendar days after the end of each calendar quarter. For the purposes of this Agreement, calendar quarters end March 31, June 30, September 30, and December 31.
- b) The VSR must contain:
 - i) Complete and accurate details of all receipts (for both sales and refunds) for the reported period;
 - ii) The information identified in DAS PS document titled *Volume Sales Report Template*. This document should be supplied by the DAS PS Contract Administrator at time of execution.
 - iii) Such other information as DAS PS may reasonably request. Contractor shall send a VSR to DAS PS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter." This report may be sent by e-mail without any attachment provided the subject title clearly identifies Contractor's company name, the relevant Price Agreement Number, and the reporting period for the VSR.
- c) Contractor shall provide the VSR in MS Excel (.xls, .xlsx) format and in spreadsheet form. The VSR must be submitted by e-mail unless the size of the file precludes transmission by email. VSR may be submitted by CD if the file precludes transmission by email. Delivered print outs of VSRs or faxed VSRs are not acceptable. Approval from the Contract Administrator must be obtained for deviations from these requirements.
- d) Contractor shall submit the **first** VSR to the DAS PS Contract Administrator for review and approval. The approved first VSR and **subsequent** VSRs must be submitted to VCAF.REPORTING@OREGON.GOV. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Price Agreement shall not preclude DAS PS from challenging the validity thereof at any time.
- e) Procurement Services reserves the right to terminate this Price Agreement if VSRs are not received as scheduled or in the prescribed format.

2) Vendor Collected Administrative Fee (VCAF)

- a) Contractor shall remit to DAS PS a VCAF based on invoices received from Procurement Services within 45 days from date of invoice receipt. Procurement Services generates invoices from data provided by Contractor in quarterly Volume Sales Report.
- b) Contractor shall not reflect the VCAF as a separate Quote, PO or Invoice line item charge to Authorized Purchasers.
- c) Contractor shall keep records showing the sales of Goods pursuant to this Agreement in sufficient detail to enable the DAS PS to determine the VCAF payable by Contractor and further agrees to permit its books and records to be examined from time to time to the extent necessary to verify the Volume Sales Reports. Such examination is to be made at the expense of DAS PS by any auditor appointed by DAS PS who is reasonably acceptable to Contractor, or, at the option and expense of Contractor, by a certified public accountant appointed by Contractor.
- d) In the event that such examination reveals underpayment of the VCAF, Contractor shall immediately pay to DAS PS the amount of deficiency, together with any interest owed. If the examination reveals an underpayment of 5% or more, Contractor shall reimburse DAS PS for the cost of the audit.
- e) The VCAF is a charge equal to 1% [One Percent] of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter. For purposes of this Agreement, "credits" includes refunds.
- f) Starting 45 days after receipt of invoice, any Contractor late payments of the VCAF will accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount has been paid in full. DAS PS' right to interest on late payments shall not preclude DAS PS from exercising any of its other rights or remedies pursuant to this Price Agreement or otherwise with regards to Contractor's failure to make timely remittances.
- g) Contractor shall make VCAF payments by Automated Clearing House (ACH) transactions.

ACH Credit transactions will be initiated by Contractor to initiate transfer of funds from a bank account of Contractor's choosing to the bank for DAS PS after Contractor receives from DAS PS a completed authorization agreement for ACH Credits. These payment transactions will be processed upon receipt of invoice from Procurement Services. Contractor shall comply with DAS PS's reasonable instructions to facilitate this method of payment.

h) In the event ACH is not available as a means of invoice payment, Contractor may remit in the form of a check. The check MUST reference the DAS PS invoice number. Payments must be mailed to:

DAS-SFS-Cashier
155 Cottage ST NE
Salem, OR 97301

Exhibit D

INSURANCE REQUIREMENTS

1. INSURANCE REQUIREMENTS:

Contractor shall obtain at Contractor's expense the insurance specified in this section 1.6 of the Agreement 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, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. 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 \$5,000,000 per occurrence. Annual aggregate limit shall not be less than \$10,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Required Not required

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 \$1,000,000 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.

MANUFACTURER ERROR & OMISSION (E&O):

Required Not required

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Manufacturer E&O insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile liability insurance required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities 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.

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. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

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 Section 1.6.

**Exhibit E
SPECIFICATIONS**

1 GENERAL PROVISIONS:

- 1.1 SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for solicitation change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.
- 1.2 ADHERENCE TO THE SPECIFICATIONS:** Deviations from specifications discovered after purchase shall be corrected by Contractor at no cost to the Authorized Purchaser.

Dropship/Dock Delivery: Included in contract pricing

Inside Delivery: Subject to a reasonable inside delivery charge by authorized dealer, which will be approved by Authorized Purchaser prior to invoicing.

Authorized Dealers:

Harris Worksystems
11530 SW Tiedeman Ave
Tigard OR 97223
Contact: Colleen Harris
Phone: 503-643-3018
Email: colleenh@HarrisWorkSystems.com

Commercial Business Furniture
1070 Commercial Street NE
Salem OR 97301
Contact: Katy Mizer
Phone: 503-363-3161
Email: katymizer@cfbergo.com

Worksite Solutions
3276 Stark Ct
Contact: Ron
Eugene OR 97404
Phone: 541-681-1074
Email: ron@wksitesolutions.com

NW Office Interiors
6400 SE Lake Rd, #375
Milwaukie, OR 97222
Contact: Staci DeLorenzo
Phone: 503-785-15145
Email: staci@nwofficeinteriors.com