

**CONTRACT #PO 16500-00002791  
OREGON VOTES ELECTIONS SYSTEM**

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## PREAMBLE

This Information Technology Master Services Agreement (this "Agreement") is entered into by and between the State of Oregon acting by and through its Secretary of State ("Agency"), and KnowiNK LLC. ("Contractor") and is effective as of the Agreement Effective Date (defined below).

## RECITALS

1. Agency desires to engage a Contractor to provide modernization of Agency's and Counties' Oregon Central Voter Registration (OCVR) system and related Election Management Systems (the "Services" as defined below) to enable Agency and Counties to achieve specific business and mission objectives defined in this Agreement, including implementation and testing of the System (as defined below) intended to replace one or more systems or applications currently performing voter registration and election administration and management functions in Oregon. To that end, Agency issued RFP #S-16500-00000053.
2. Contractor is the successful proposer to the RFP and Agency desires Contractor to perform, and Contractor wishes to perform the Services set forth in individual Transaction Documents entered into under this Agreement, the first of which the Parties intend to enter into concurrently with the Agreement Effective Date.

## AGREEMENT

In consideration of the foregoing recitals, the mutual terms and conditions set forth below, and the mutual terms and conditions set forth in Transaction Document No. 1, Agency and Contractor agree as follows:

### 1. DEFINITIONS

**"Acceptance" or "Accepted"** means written confirmation by Agency that Contractor has completed a Deliverable according to the Acceptance Criteria. The term is distinct from "Final Acceptance."

**"Acceptance Criteria"** means the criteria for accepting Deliverables delivered under a Transaction Document, including but not limited to Requirements, specifications in a Statement of Work, criteria set forth in any Deliverable Expectation Documents delivered and Accepted by Agency related to a particular Deliverable, and the Performance Warranties set forth in Section 15.2 and any additional warranties set forth in a Transaction Document. Each Deliverable shall maintain its own Acceptance Criteria and Acceptance Tests (as defined below), if applicable.

**"Acceptance Tests"** means those tests which are intended to determine compliance of Deliverables with the Acceptance Criteria.

**"Agency Data"** means information created and information stored by Agency through the System, and information that is received, created for, or collected by Contractor during the

course of providing the Services, including Personal Information and any such data stored, managed or processed by the System. Agency Data includes, without limitation, data provided by or to Agency, Counties, voters and applicants for voter registration, candidate data, and campaign finance data.

**“Agency Intellectual Property”** means any intellectual property that is owned by Agency, including Agency Data. Agency Intellectual Property includes any derivative works and compilations of any Agency Intellectual Property.

**“Agency Project Manager”** means the person representing Agency who serves as Contractor’s primary point of contact under a Transaction Document.

**“Agreement”** means all terms and conditions herein and all Exhibits attached hereto.

**“Agreement Effective Date”** means the the date on which this Agreement is fully executed and approved according to applicable laws, rules and regulations.

**“Authorized Representative”** means a person representing a party to either this Agreement or a Transaction Document who is authorized to make commitments and decisions on behalf of the party regarding the administration and performance of this Agreement or a Transaction Document. Contractor’s Authorized Representative for the Agreement is the person so identified in Exhibit D. Agency’s Authorized Representative for the Agreement is the person so identified in Exhibit E. Each Transaction Document shall list each Party’s Authorized Representative for the Transaction Document.

**“Base Maintenance and Support Period”** or **“M&S Period”** means the initial term negotiated and set forth in a Transaction Document for Contractor to provide maintenance and support services (including Enhancements when requested) for the System.

**“Business Days”** means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding State of Oregon holidays and business closure days.

**“Calendar Days”** means contiguous days.

**“Change Order”** means a form of Agreement or Transaction Document amendment pursuant to Section 10 that makes changes to a Statement of Work.

**“Confidential Information”** is defined in Section 12.1.

**“Contractor Agents”** means the agents, subcontractors and representatives of Contractor and includes affiliates of Contractor. For purposes of the foregoing, Contractor’s affiliates are those entities that, directly or indirectly, control, are controlled by or are under common control with Contractor, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of

such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

**“Contractor Intellectual Property”** means any intellectual property that is owned by Contractor and contained in or necessary for the use of the Deliverables, including, but not limited to, any enhancements, modifications or alterations which are made to the Software pursuant to any Transaction Document, Statement of Work or Deliverable. Contractor Intellectual Property includes Software owned by Contractor, including any described in a Statement of Work, and derivative works and compilations of any Contractor Intellectual Property.

**“Contractor Staff”** means the personnel of Contractor and Contractor Agents who provide the Services under this Agreement.

**“Data Error”** – means errors in System data caused by failures in data conversion or failures caused by System processing. Data entry errors are not Data Errors.

**“Defect”** means a reproducible failure of the System to operate in accordance with the Requirements and specifications in a Statement of Work, despite the proper use of the System. A Defect may be due to a Data Error, or a problem with the System, Documentation, or both. Prior to Acceptance of a Deliverable, the System, or an Enhancement, a Defect may be due to a missed, missing, or misinterpreted Requirement. Defect levels will be negotiated with the successful Proposer, but are anticipated to fall into one of the following categories:

**Level 1 – Catastrophic.** The System or a main subsystem is unavailable, preventing the System or a core function from operating or causing core functions or major functionality to operate with grossly incorrect results, such as material data processing errors. There is no workaround.

**Level 2– Major.** Use of the System or a subsystem is interrupted or a System failure otherwise causes major functions to not operate or to operate with significantly incorrect results, such as data processing errors. There is no workaround.

**Level 3 – Minor.** Does not qualify as a Level 1 or Level 2 but which nonetheless prevents minor functionality from operating or causes minor functions to operate with incorrect results. There is a clear business need to have the System repaired, but workarounds exist for business operations.

**Level 4 – Insignificant.** Does not affect functionality of the System. Low priority with no direct impact on clients or Agency staff. Cosmetic or nonessential in nature.

**“Deliverables”** means all items that Contractor is required to provide to Agency under Transaction Documents, including Work Product.

**“Delivery Schedule”** means that attribute of a Transaction Document setting forth the completion date of each Milestone and the delivery date for each Deliverable.

**“Documentation”** means all documents, including documents that are Deliverables described in a Transaction Document and which may include any and all operator’s and user’s manuals, training materials, guides, commentary, listings, requirements traceability matrices and other materials for use in conjunction with and for the operation of the System and its components that are to be delivered by Contractor under a Transaction Document. Documentation includes documents in hard copy or electronic form.

**“DOJ”** means the State of Oregon acting through its Department of Justice.

**“Enhancements”** means improvements to or additional components of the Services or System that add functionality.

**“External QA Consultant”** refers to Agency’s contracted consultant responsible for independent quality management services for the Services delivered under a Transaction Document.

**“Final Acceptance”** means satisfaction of conditions specified in a Transaction Document for Agency’s Acceptance of a specified grouping of Deliverables, Tasks, and Milestones, or the Acceptance following Acceptance Testing and the completion of any other conditions specified in a Transaction Document for the System or an Enhancement to the System. Not all Services set forth in Transaction Documents will be subject to Final Acceptance. Should the Transaction Documents not specify that Final Acceptance is required for the particular Deliverable or Milestone payment to Contractor shall be required upon Acceptance.

**“Governmental Approvals”** means (i) all licenses, consents, permits, approvals and authorizations of any Governmental Authority, the granting of which is required by law for a Party to consummate the transactions or provide or receive the Services contemplated by this Agreement, or (ii) any notice required to be given to a Governmental Authority prior to a Party consummating the transactions or providing or receiving the Services contemplated by this Agreement.

**“Governmental Authority”** means any federal, state, municipal, local, territorial, or other governmental department, agency, regulatory authority, judicial, legislative, or administrative body.

**“Help Desk Support”** means all necessary activities to assist the users to effectively and efficiently use the System. Support will be negotiated with the successful Proposer and set forth in a Transaction Document, but is anticipated to provide these levels of support:

**Tier 1 Support.** Provides basic software and hardware support to end users.

**Tier 2 Support.** Provides more complex user support on software and is usually an escalation from Tier 1 Support.

**“Hosting Services”** means the sum total of the hardware, telecommunications services, data center services and other related services necessary to host and make available the Non-Production Environments and Production Environments.

**“Intellectual Property Rights”** is defined in Section 16.2.

**“Key Persons”** means Contractor’s Authorized Representative, the Project Manager, and all other Contractor personnel designated as Key Persons in, as applicable, Exhibit D or a Transaction Document.

**“Transaction Document Maximum Not-To-Exceed Compensation”** is defined in Section 9.1.

**“Milestone”** means the completion date for a specific group of Tasks or Deliverables identified as a Milestone in a Statement of Work.

**“Non-Production Environment(s)”** means an environment or all of the System environments where the System is developed, tested, and otherwise analyzed or used prior to the System (or release of post go-live functionality) being deployed into the Production Environment.

**“Parties”** means Agency and Contractor.

**“Party”** means either Agency, Contractor, or both, as the context requires.

**“Personal Information”** is defined in Section 14.8.

**“Production Environment”** means the environment that the System is put into operation for its intended use and made available to its intended end-users.

**“Project Manager”** means Contractor’s representative who manages the processes and coordinates the Services under a Transaction Document with Agency’s Authorized Representative under the Transaction Document to ensure delivery of the Deliverables and completion of Tasks and Milestones. Contractor’s Project Manager for each Transaction Document will be set forth in the Transaction Document.

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

**“Requirements”** are the functions and elements required for the System or any Enhancement. Requirements will be set forth or referenced in the Transaction Document under which they will be implemented.

**“RFP”** means the Request for Proposal #S-16500-00000053.

**“Services”** means all effort to be expended by Contractor under the Agreement and each Transaction Document, including installation, configuration, customization, implementation, maintenance support, enhancement, warranty services, and support of the System.

**“Service Level Credits” or “Fee Reductions”** means the payment credits or the reduction of fees set forth in this Agreement or a Transaction Document for failure to meet or exceed Service Levels.



**“Service Levels”** or **“Service Level Requirements”** means the standards of service set forth in Schedule 2 to a Transaction Document that Contractor must attain in providing the Services under the Transaction Document.

**“Service Locations”** means the locations from which Contractor will provide the Services. Service Locations includes the sites or facilities at which the System or its components are hosted, whether or not controlled by Contractor.

**“Software”** is an all-inclusive term meaning any computer programs, routines, or subroutines supplied by Contractor, including operating software, programming aids, application programs, application data files, and software products.

**“State”** means the State of Oregon.

**“Statement of Work”** or **“SOW”** means the documents attached to a Transaction Document as its Schedule 1 that describe the Services to be provided by Contractor, including the Tasks, Deliverables and Milestones, developments, Work Product, the attributes (including requirements and specifications) of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the Payment Schedule for each Deliverable and Milestone, and any other items as agreed by the parties and attached to a Transaction Document.

**“System”** means the sum total of the Services, the Deliverables, the Contractor Intellectual Property, the Third Party Intellectual Property the Software, the hardware (if applicable), Hosting Services, and the Documentation described in one or more Transaction Documents that comprise the information system that Contractor will deliver, develop, install, configure, implement, enhance, and maintain under this Agreement and such Transaction Documents.

**“Task”** means a segment of the Services to be provided by Contractor under this Agreement.

**“Third Party Intellectual Property”** means any intellectual property owned by parties other than Agency or Contractor. Third Party Intellectual Property includes Software owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

**“Transaction Document”** is defined in Section 3.1.

**“Transaction Document Effective Date”** means the date specified in a Transaction Document or the date on which a Transaction Document is fully executed and approved according to applicable laws, rules and regulations, whichever is later.

**“Warranty Period”** means the duration of a warranty given by Contractor to Agency under to this Agreement (including in Section 15.1 and 15.2) or a Transaction Document. Unless stated otherwise in a Transaction Document with respect to a particular Deliverable

(including Deliverables that are Hardware), the System, or an Enhancement, the Warranty Period is 6 months from the date the Deliverable is received by Agency.

**“Work Product”** means everything that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s subcontractors or agents (either alone or with others) pursuant to a Transaction Document, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection). Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product is not Contractor Intellectual Property, or Third Party Intellectual Property. Work Product also does not include derivative works of either Contractor Intellectual Property or Third Party Intellectual Property.

## **2. TERM**

The term of this Agreement (the “Term”) will commence on the Effective Date and continue until the earlier of (A) the End Date of the last Transaction Document in effect under this Agreement or (B) termination of this Agreement and all Transaction Documents then in effect in accordance with Section 20 (Termination).

## **3. TRANSACTION DOCUMENTS**

**3.1. Transaction Documents.** This Agreement sets forth contractual terms for Services to be provided to Agency by Contractor during the Term. Services will be provided by Contractor in accordance with this Agreement and one or more Transaction Documents entered into by Agency and Contractor, each substantially in the form set forth in Exhibit A (Form of Transaction Document) (each, a “Transaction Document”). Each Transaction Document will describe, at a minimum and as applicable:

**3.1.1.** the term of such Transaction Document (the “Transaction Document Term”);

**3.1.2.** the Services to be performed and Deliverables to be provided under such Transaction Document;

**3.1.3.** Service Levels for such Services, together with the corresponding Service Level Credits or Fee Reductions;

**3.1.4.** Acceptance Criteria for any Deliverables to be delivered pursuant to such Transaction Document and any associated Deliverable Credits;

**3.1.5.** Final Acceptance Criteria for the completion of the Services described in the Transaction Document;

**3.1.6.** the charges and other payment provisions (which will be the payment provisions set forth in this Agreement unless otherwise expressly agreed in such Transaction Document) for all Services under such Transaction Document;

- 3.1.7.** all reports to be provided pursuant to such Services;
- 3.1.8.** the Key Personnel designated for such Services;
- 3.1.9.** disaster recovery and business continuity requirements specific to such Services;  
and
- 3.1.10.** all other matters required by this Agreement to be set forth in a Transaction Document.

**3.2. Ancillary Services.** If there are ancillary services, functions, responsibilities or tasks not specifically described in a Transaction Document that are required for the proper performance and provision of the Services under such Transaction Document or are an inherent part of, or a necessary sub-part included within such Services, then such services, functions, responsibilities or tasks will be deemed to be implied by and included within the scope of the Services under such Transaction Document to the same extent and in the same manner as if specifically described in such Transaction Document.

**3.3. Term of Transaction Document.** Each Transaction Document will incorporate by reference, and will be subject to, the terms and conditions of this Agreement. Each Transaction Document will be interpreted as a single agreement so that all of the provisions are given as full effect as possible. In the event of a conflict between this Agreement and any Transaction Document, the order of precedence will be as follows (items with a lower number having priority over, and controlling in the event of a conflict with, items having a higher number): (1) the terms and conditions of this Agreement less its Exhibits; (2) the Exhibits to this Agreement; (3) the Transaction Document (but only in respect of Services to be performed under such Transaction Document) and (4) the Schedules to such Transaction Document (but only in respect of Services to be performed under such Transaction Document).

#### **4. SCOPE OF SERVICES**

**4.1. Responsibilities of Contractor.** Contractor shall perform the Services as set forth in the Statement of Work, in accordance with the standards and methodologies set forth in the Statement of Work and elsewhere in this Agreement and in Transaction Documents (but only with respect to the Services set forth in such Transaction Document). Contractor agrees to perform the Services employing a methodology that conforms to the standards established by the Project Management Institute (PMI) as described in the most current version of the Project Management Body of Knowledge (PMBOK).

**4.2. Cooperation.** Contractor shall cooperate with Agency and its designated third parties, including its External QA Consultant, by providing access and information on the System's architecture, components, design, operating environment, interfaces, and operating parameters as required for all oversight activities and Agency-identified third party services.

- 4.3. Organizational Business Continuity Plan.** During the Term Contractor shall maintain and document an operational business continuity and disaster recovery plan, substantially in the form of Exhibit G, that provides the steps that Contractor will take to maintain its core business functions or quickly resume them in the event of a disruption, including a disruption caused by a force majeure event as described in Section 30.
- 4.4. Hardware.** If Agency elects to have the Contractor provide hardware, Contractor shall deliver any Hardware to the Agency F.O.B. destination, to the destination specified by Agency, and according to the Delivery Schedule approved by Agency. Title for the Hardware will pass to State for each piece of Hardware on the date of Final Acceptance. During the period that Hardware is in transit, and until the Hardware is tendered to enable Agency to take delivery of the Hardware, Contractor and its insurers, if any, relieve the Agency and State of the responsibility for all risk of loss of, or damage to, the Hardware. Thereafter, all risk of loss of, or damage to, the Hardware will be borne by State.
- 4.5. Responsibilities of Agency.** If this Agreement or any Transaction Document requires Agency to provide any resources, and Agency fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner for a period that does not exceed thirty (30) Calendar Days and the Services subject to such failure are not subject to a then-effective Stop Work Order given under Section 21, Contractor's sole remedy is an extension of the applicable delivery dates corresponding to the delay caused by Agency. If Agency's failure to provide such resources exceeds thirty (30) Calendar Days, and Contractor can show to the reasonable satisfaction of Agency that the Agency's failure has resulted in an unavoidable increase in the cost of the Services required for the Transaction Document, then Contractor will be entitled to recover from Agency the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates or recover for increased costs may be exercised only if Contractor provides Agency with reasonable notice of Agency's failure and Contractor uses commercially reasonable efforts to perform notwithstanding Agency's failure to perform.
- 4.6. Delivery and Review of Deliverables**
- 4.6.1.** Contractor shall deliver Deliverables and complete Tasks and Milestones as set forth in the Transaction Document by no later than the date or dates set for delivery in the Transaction Document, subject to delays as set forth within Section 4.5 above and other outside circumstances or third party delays which are not the fault of Contractor.
- 4.6.2.** Contractor shall provide written notice to Agency upon delivery of a completed Deliverable to Agency. By the date that is fifteen (15) Business Days after receipt of such notice, unless a different date is set forth in the applicable Delivery Schedule or Transaction Document under which Contractor delivers the Deliverable, Agency will determine whether the Deliverable meets Acceptance Criteria set forth in this Agreement and the Transaction Document. With respect

to any Deliverables that are, by the terms of a Transaction Document, subject to Acceptance testing, Agency will conduct interim Acceptance Testing as set forth in the applicable Transaction Document. If Agency determines that a Deliverable meets, in all material respects, Acceptance Criteria, Agency will notify Contractor of Agency's Acceptance in writing.

**4.6.3.** If Agency determines that a Deliverable does not meet the Acceptance Criteria in all material respects, Agency will notify Contractor in writing of Agency's rejection of the Deliverable, and describe in reasonable detail in such notice the Agency's basis for rejection of the Deliverable. Upon receipt of notice of non-acceptance, Contractor shall, within a fifteen (15) Business Day period, or a different period established for the applicable Deliverable if set forth in the applicable Transaction Document, modify or improve the Deliverable at Contractor's sole expense so that the Deliverable meets, in all material respects, the Acceptance Criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverable to Agency. Agency will review and accept or reject the modified Deliverable according to the process set forth in Section 4.6.2 above. Failure of the Deliverable to meet the Acceptance Criteria in all material respects after the second submission will constitute a default by Contractor. In the event of such default, Agency may either (i) notify Contractor of such default or instruct Contractor to modify or improve the Deliverables as set forth in this section, or (ii) notify Contractor of such default and pursue its remedies for default under Section 19 of this Agreement.

**4.7 Acceptance Testing.** If any Services or Deliverables, the System or any of its components, or any Enhancements are subject to Accepting Testing, the process and requirements for such testing shall be set forth in the applicable Transaction Document.

## **5. SERVICE LEVELS; SERVICE CREDITS, FEE REDUCTIONS, AND DELIVERABLE CREDITS**

**5.1 Service Levels.** Contractor will perform the Services set forth in each Transaction Document in accordance with the Service Levels set forth in Schedule 2 (Service Levels) of such Transaction Document.

**5.2 Measurement and Monitoring Tools.** As of the applicable Transaction Document Effective Date, Contractor will implement the measurement and monitoring Tools and procedures required to measure and report (as contemplated the applicable Transaction Document) Contractor's performance of the Services against the applicable Service Levels. Such measurement and monitoring and procedures will permit reporting at a level of detail that is sufficient to verify compliance with the Service Levels.

**5.3 Service Level Reporting.** Contractor will provide Agency with periodic reports on Contractor's compliance with the Service Levels as set forth in the applicable Transaction Document

**5.3.1** Contractor will provide Agency with on-line access to such periodic reports and to the data used to generate such reports, so that Agency is able to access the same information as soon as it is available on-line to Contractor.

**5.3.2** Contractor will provide Agency and its designees information concerning such measurement and monitoring Tools and procedures upon request for inspection and verification purposes.

**5.4 Root-Cause Analysis.**

**5.4.1** If Contractor fails to provide the Services in accordance with the Service Levels, Contractor will (1) promptly investigate, perform a root cause analysis on the failure, (2) identify the problem causing the failure and report to Agency, (3) correct the problem as soon as practicable and resume meeting the Service Levels, (4) advise Agency of the status of the problem at stages determined by Agency and (5) demonstrate to Agency that all reasonable action has been taken to prevent any recurrence of such default or failure.

**5.4.2** Contractor will, at any time at which Contractor anticipates that it will fail to meet a Service Level, advise Agency of the status of the problem at time intervals determined by Agency.

**5.5 Service Level Credits and Fee Reductions.**

**5.5.1** In the event of a failure to provide the Services set forth in any Transaction Document in accordance with the applicable Service Levels, Contractor will incur the Service Level Credits or Fee Reductions identified in and according to Schedule 2 (Service Levels) to such Transaction Document.

**5.5.2** Service Level Credits and Fee Reductions will be allocated among the Service Levels and calculated in accordance with the procedure set forth in Schedule 2 (Service Levels) to the applicable Transaction Document.

**5.5.3** The Service Level Credits or Fee Reductions will not limit Agency's right to recover, in accordance with this Agreement, other damages incurred by Agency as a result of such failure; provided, however, that any award of damages in respect of any such failure will be reduced by any Service Level Credits already credited by Contractor to Agency in respect of such failure.

**5.5.4** Nothing in this Section will be deemed to limit or obviate Agency's right to terminate this Agreement or any Transaction Document pursuant to Section 20.3.

**5.6 Deliverable Credits.**

**5.6.1** Deliverable Credits are one-time credits for failing to provide certain Deliverables by the time or in the manner agreed in a Transaction Document. Deliverable Credits apply to (1) Deliverables in respect of which this Agreement or any Transaction Document specifies that Deliverable Credits apply and (2) such other Deliverables as may be agreed to by the Parties from time to time. Amounts for other Deliverables required during the Term will be agreed on a case-by-case basis.

**5.6.2** A Deliverable Credit payable in respect of a particular Deliverable will be credited by Contractor to Agency as follows:

**5.6.2.1** If there is a specific payment tied to the delivery of such Deliverable, on the invoice that contains the charges for such Deliverable; or

**5.6.2.2** If there is no specific payment tied to the delivery of such Deliverable, on the invoice that contains the charges for the month during which the right to such Deliverable Credit arose or as soon thereafter as is practicable.

**5.6.3** Deliverable Credits will not limit Agency's right to recover, in accordance with this Agreement, other damages incurred by Agency as a result of failure to provide Deliverables that are subject to a Deliverable Credit by the time or in the manner agreed; provided, however, that any award of damages in respect of any such failure will be reduced by any Deliverable Credits already credited by Contractor to Agency in respect of such failure.

**5.6.4** Nothing in this Section will be deemed to limit or obviate Agency's right to terminate this Agreement or any Transaction Document pursuant to Section 20.3.

**5.7 Performance Information.** The raw data and detailed supporting information and reports to be delivered to Agency relating to Service Levels and performance ("Performance Information") will be Agency Data for the purposes of this Agreement. Contractor may only use Performance Information in the course of providing the Services and for its internal business purposes and will provide material containing that Performance Information to Agency promptly on request.

## **6. TRANSITION SERVICES**

**6.1 Transition Services Transaction Document.** If requested by Agency at any time during the Term, Contractor shall, in good faith, negotiate a Transaction Document under which Contractor will provide transition services to Agency to support a responsible and secure transition of Services and Agency Data to another service provider or to Agency ("Transition Services"). Without limiting the generality of the foregoing, the Transaction Document for Transition Services shall include, without limitation:

**6.1.1** the respective tasks and Deliverables to be completed by each party to complete the Transition Services;

**6.1.2** a schedule pursuant to which such tasks and Deliverables will be completed; and

**6.1.3** a schedule identifying which party is responsible for paying the cost (if any) related to each Task and Deliverable.

**6.2 Delivery of Agency Data.** Regardless of whether Agency and Contractor have entered into a Transaction Document requiring Contractor to provide Transition Services, at any time during the Term Contractor shall transfer to Agency or a third party identified by Agency, all Agency Data in Contractor's or its subcontractors' possession, without causing any unnecessary interruption of or adverse impact on the System or Services.

**6.3 Wind-Down.** Upon the later of **(a)** the termination of this Agreement or **(b)** completion of any agreed-upon Transition Services, Contractor will cease to perform Services, and Agency will pay Contractor all amounts payable to Contractor for Deliverables and Services delivered, and pre-approved expenses incurred through the end of the Term and any agreed upon Transition Period, subject to any rights Agency has under this Agreement or a Transaction Document to withhold or set off such payments.

## **7. CONTRACTOR'S PERSONNEL**

**7.1 Key Persons.** Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Agreement and each Transaction Document, because of the special qualifications of Contractor's Key Persons identified in Exhibit D (with respect to the Agreement), or in a Transaction Document (with respect to the Transaction Document). Contractor's Key Persons shall not delegate performance of their powers and responsibilities they are required to provide under this Agreement or a Transaction Document to another Contractor employee(s) without first obtaining the written consent of the Agency. Further, Contractor shall not re-assign or transfer a Key Persons to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace Key Persons without Agency's consent in the event any Key Persons are no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons, Agency may interview, review the qualifications of, and approve or reject the proposed replacement(s) for the Key Persons. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency will thereafter be deemed a Key Person for purposes of this Agreement and the applicable Transaction Document and Exhibit D or the Transaction Document, as applicable, will be deemed amended to include such Key Person. Agency reserves the right to determine if a replacement Key Person has acquired the project knowledge and skills necessary to perform within the twenty-eight (28) Calendar Day period following Agency approval of the replacement Key Person.

**7.2 Project Manager.** Contractor shall designate a Project Manager as a Key Person under each Transaction Document for the Services provided under the Transaction Document. The Project Manager shall be familiar with Agency's business operations and objectives. The Project Manager will participate with Agency in periodic review sessions and will provide at Agency's request detailed progress reports that identify completed tasks and the status of the Services provided under the Transaction Document.

**7.3 Service Manager.** Contractor shall designate a Service Manager as a Key Person for the Maintenance and Operations Period of the Services. The Service Manager shall be



familiar with Agency's business operations and objectives. The Service Manager will participate with Agency in regular meetings. The Service Manager must:

- 7.3.1** provide measurement and monitoring reports to verify compliance with Service Levels;
  - 7.3.2** review System and Contractor's performance throughout the Term and discuss possible improvements;
  - 7.3.3** discuss changes and Enhancements to the System or any new technologies that may be available for Agency;
  - 7.3.4** discuss any other Agency-raised issues or concerns; and
  - 7.3.5** provide, at Agency's request, such other reports as Agency may request;
  - 7.3.6** provide measurement and monitoring reports to verify compliance with Service Levels;
  - 7.3.7** review System and Contractor's performance throughout the Term and discuss possible improvements;
  - 7.3.8** discuss changes and Enhancements to the System or any new technologies that may be available for Agency;
  - 7.3.9** discuss any other Agency-raised issues or concerns; and
  - 7.3.10** provide, at Agency's request, such other reports as Agency may request.
- 7.4 Contractor's Employees and Subcontractors.** Contractor shall not use subcontractors to perform the Services without the Agency's prior written consent. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services, will perform the Services in accordance with the warranties set forth in Section 15 of this Agreement. All Services must be performed by Contractor Staff physically located within the United States or its territories.
- 7.5 Criminal Records Checks.** Each of Contractor Staff is subject to a Criminal Records Check and Fitness determination pursuant to ORS 177.075, and OAR Chapter 167, Division 050 (the "Background Check Rule"). Agency will determine the disqualifying crimes and will make a final fitness determination pursuant to the Background Check Rule. Contractor will not permit any Contractor Staff to perform Services that Agency has determined to be unfit pursuant to the Background Check Rule.
- 7.6 Anti-Discrimination.** Contractor certifies that Contractor has a written policy and practice that meets the requirements described in House Bill 3060 (2017 Oregon Laws, chapter 212, codified at ORS 279A.212) for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Agreement, to maintain such policy and practice in force during the entire Term. Contractor's failure to maintain such policy and practice constitutes a breach entitling Agency to terminate this Agreement for cause.

**7.7 Pay Equity.** As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and not unlawfully discriminate against any of its 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 is a material term of this Agreement, and Contractor's failure to comply constitutes a breach entitling Agency to terminate this Agreement for cause.

**7.7.1** As required by ORS 279B.235, Contractor may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

## **8. INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING**

**8.1 Independent Contractor.** Contractor shall perform all Services as an independent contractor. Although Agency reserves the right to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services. Contractor declares and certifies by execution of this Agreement that it is not an "officer," "employee," or "agent" of Agency, as those terms are used in ORS 30.265.

**8.2 No Partnership.** Neither this Agreement nor any Transaction Document is intended, and will not be construed, to create a partnership or joint venture between Agency and Contractor. Nothing in this Agreement or a Transaction Document will be construed to make Agency and Contractor partners or joint venture participants.

**8.3 Declaration and Certification as to Conflict of Interest.** Contractor by execution of this Agreement declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel who will perform Services under this Agreement, and (ii) in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Services under this Agreement.

**8.4 Responsible for Taxes.** Contractor is responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Agreement and each Transaction Document entered into hereunder, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation and payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers'

compensation benefits from compensation or payments paid to Contractor under this Agreement, except as a self-employed individual.

- 8.5 Compliance with Tax Laws.** Contractor shall, throughout the Term, comply with all tax laws of State and all applicable tax laws of any political subdivision of State. Any violation of this section or of Contractor's warranty in Section 15.1.6 constitutes a material breach of this Agreement and each then-effective Transaction Document. Any violation of this section or Section 15.1.6 entitles Agency to terminate this Agreement and any such Transaction Documents, to pursue and recover damages that arise from the breach and the termination of this Agreement, and to pursue all other remedies available under this Agreement, at law, or in equity.
- 8.6 Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement. Contractor shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon before entering into this Agreement.
- 8.7 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.

## **9. COMPENSATION**

**9.1 Payments Generally.** In consideration of Contractor providing the Services under this Agreement and any Transaction Document, Agency will pay to Contractor the charges for such Services as set forth in such Transaction Document. Except as expressly set forth in the applicable Transaction Document, there will be no charge or charges payable by Agency in respect of Contractor's performance of its obligations pursuant to any Transaction Document. Each Transaction Document shall set forth a maximum not-to-exceed compensation payable by Agency for the Services and Deliverables set forth in the Transaction Document (the "Transaction Document Maximum Not-To-Exceed Compensation"), which will include any allowable expenses payable by Agency to Contractor under the Transaction Document.

**9.2 Payments.** Payments are subject to all provisions of this Section 9.

**9.2.1 Payment of Fixed Prices.** Agency will pay to Contractor the fixed price listed in each Transaction Document for each Deliverable, Task or Milestone completed, delivered to, and Accepted by Agency under the Transaction Document.

**9.2.2 Payment for Hardware.** Subject to the parties' agreement that Contractor will provide any Hardware under a Transaction Document, Agency will pay

Contractor for any Hardware delivered under the Transaction Document upon Agency's Acceptance of the Hardware.

- 9.2.3 Payment for Software.** Subject to the parties' agreement that Contractor will provide any Software under a Transaction Document, Agency will pay Contractor for Software, including Third Party Intellectual Property (third party software), required and delivered under the Transaction Document in accordance with the prices and delivery terms set forth in the Transaction Document.
- 9.3 Incentive Payments.** If agreed to by Agency and Contractor a Transaction Document may provide for the payment of incentive or contingency payments by Agency to Contractor for achieving specified delivery or performance goals, or for performing Services subject to a contingency defined in the Transaction Document. Any such delivery or performance goals or contingencies, and the corresponding incentive or contingency payments, shall be specified in a Transaction Document, and shall apply only to the Transaction Document in which the incentive or contingency payments are specified. Contractor is not entitled to any incentive payments or contingency payments other than those specified in a Transaction Document, and shall only be entitled to such payments as set forth in the Transaction Document.
- 9.4 Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in a Transaction Document. Any such authorized travel expenses must comply with the Oregon Travel Policy.
- 9.5 Invoices.** Agency will pay Contractor not more than once each month upon Contractor's submission of a detailed invoice that sets forth the Services performed and Deliverables Accepted by Agency. Invoices must be submitted using <https://oregonbuys.gov>. Such invoices must comply with the requirements of this Section 9 and any additional requirements set forth in a Transaction Document, identify the Deliverables completed and Accepted for which Contractor seeks compensation, and itemize and explain all authorized expenses for which reimbursement is claimed. Agency will have the right to review each such invoice for compliance with the requirements of this section and any other relevant provisions of this Agreement and the applicable Transaction Document. All payments to Contractor are subject to ORS 293.462.
- 9.6 Limit on Payments.** Contractor shall not submit invoices for, and Agency will not pay, any amount under a Transaction Document in excess of the Transaction Document Maximum Not-To-Exceed Compensation set forth in the Transaction Document. If this maximum amount is increased by amendment of this Agreement pursuant to Section 10, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or goods delivered under a Transaction Document before the Effective Date or after termination of the Transaction Document.

**9.7 Funds Available and Authorized.** Contractor will not be compensated for Services performed under this Agreement and Transaction Document by any other agency or department of the State of Oregon. By entering into a Transaction Document Agency represents its belief that it has sufficient funds then currently available and authorized for expenditure to finance the costs of the Services and deliverables described in the Transaction Document during the current biennium within Agency's applicable biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under a Transaction Document 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 the Transaction Document.

**9.8 Contractor or Subrecipient Determination.**

In accordance with the Oregon State Controller's Oregon Accounting Manual, policy 30.40.00. 104, Agency's determination is that:

Recipient is a subrecipient       Recipient is a contractor

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 90.404.

**10. AMENDMENTS; CHANGE CONTROL**

**10.1. Amendments.** This Agreement or any Transaction Document may be amended, modified, or supplemented only by a written amendment signed by Agency and Contractor that, if required by applicable law, has been approved for legal sufficiency by DOJ pursuant to ORS 291.047. Any amendment that provides for additional goods or Services may only provide for goods or Services directly related to the scope of goods and Services described in the RFP, and no amendment will be effective until all requisite signatures and approvals are obtained. Either Agency or Contractor may request a change to this Agreement or a Transaction Document, including all Exhibits and Schedules thereto, by submitting a written proposal describing the desired change to the other Party.

**10.2. Change Control.** Subject to the conditions above, amendments to a Statement of Work, and related charges may be managed through an Agency-authorized change control process that reflects at least the processes described in this Section. Either Agency or Contractor may request a change by submitting a written proposal describing the requested change to the other Party. Agency's and Contractors' Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

**10.3. Analysis of Change Requests; Change Orders.** The Parties will analyze each change request (that has not been rejected) in accordance with the authorized change control process to determine the effect that the implementation of the change will

have on the applicable Statement of Work and related charges. If Contractor requests to make changes in its design or implementation of the System to enable the System to meet System Requirements, such changes will be made at no cost to Agency, unless the changes are required because of failure of Agency or its agents to perform their responsibilities in a timely manner. If the analyzed change request is mutually approved, the agreed-upon Party will prepare a written change order, detailing all modifications to the applicable Statement of Work, and related costs (the "Change Order"). A Change Order at a minimum must contain:

- 10.3.1.** The effective date of the Change Order;
- 10.3.2.** A detailed description of the Services to be performed under the Change Order;
- 10.3.3.** The particular specification or matter in the Agreement or a Transaction Document which will be altered, and the precise scope of that alteration;
- 10.3.4.** Whether the Change Order modifies critical path Deliverables or Milestones;
- 10.3.5.** Whether the changes are to be included in the System;
- 10.3.6.** Any change in the charges for the Services to be performed pursuant to the Change Order; and
- 10.3.7.** The cumulative adjustments to charges made by all Change Orders previously issued.

**10.4. Scope and Effective Date of Change Order.** A Change Order will alter only that portion of a Statement of Work, and related charges to which it expressly relates and will not otherwise affect the terms and conditions of this Agreement. Services described in the Change Order shall be incorporated into the applicable Transaction Document by written amendment. No Services may be performed pursuant to the Change Order and no payment will be made on account of the Change Order until the amendment related to the Change Order is fully executed and all required State of Oregon approvals are received.

**10.5. Payments.** Subject to the foregoing provisions of this Section and performance of the Services, Agency will pay for Services performed pursuant to a Change Order according to the acceptance and payment procedures set forth in this Agreement and the applicable Transaction Document.

## **11. OWNERSHIP AND LICENSES**

**11.1 Contractor Intellectual Property.** Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Agency pursuant to the Services performed under a Transaction Document. Each Transaction Document shall include as its Schedule 7 a license for the benefit of the State of Oregon, acting through Agency, in the Contractor Intellectual Property that Contractor will deliver to the Agency under the Transaction Document. In the event that a Deliverable under a Transaction Document is not subject to a license entered into pursuant to that or any other Transaction Document, and is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property, or a

compilation that includes Contractor Intellectual Property, and provided that Agency has paid any applicable licensing fee set forth in the Transaction Document, Contractor grants Agency a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Contractor Intellectual Property employed in the Deliverable, and to authorize others to do the same on Agency's behalf.

**11.2 Work Product.** The parties agree that all Work Product delivered pursuant to any Transaction Document is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not "work made for hire" under the United States Copyright Act, Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in the Work Product delivered under each Transaction Document, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments to fully vest such rights in Agency. Contractor waives any and all rights relating to Work Product created pursuant to any Transaction Document, including without limitation any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications.

**11.3 Federally Funded Work Product.** If Work Product has been developed and delivered by Contractor as a Deliverable to Agency under a Transaction Document, and such Work Product has been funded by Agency, to any extent, with federal funds, the granting federal agency (i.e., the U.S. Election Assistance Commission) reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for federal government purposes, such Deliverable.

**11.3.1** Agency grants Contractor a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, execute, perform, modify, display, distribute, and transmit the Work Product to other governmental entities, and to prepare derivative works of Work Product, and to authorize others to do the same on Contractor's behalf, for other governmental entities.

**11.3.2** Contractor shall not charge a development, licensing or user fee to any state, federal, or local governmental entity when distributing copies of, and transferring or sublicensing rights to the federal Work Product to such entity. Contractor may recover costs of transferring or making such Work Product available from the receiving entity consistent with applicable federal law.

**11.4 Third Party Intellectual Property.** Unless otherwise specified in a Transaction Document that Agency, on its own, will acquire and obtain a license to Third Party Intellectual Property used or implemented pursuant to the Transaction Document, Contractor shall secure on Agency's behalf, in the name of Agency and subject to Agency's approval, a

license to Third Party Intellectual Property provided to Agency by Contractor under the Transaction Document necessary for Contractor to deliver Services and Deliverables under the Transaction Document. Licenses for Third Party Intellectual Property, if any, shall be set forth in Schedule 8 of a Transaction Document. In the event that a Deliverable under a Transaction Document is not subject to a license entered into pursuant to that or any other Transaction Document, and is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, and provided that Agency has paid any applicable licensing fee set forth in the Transaction Document, Contractor shall secure from the licensor of the Third Party Intellectual Property, in the Agency's name, a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.

- 11.5 Open Source Elements.** Any open source materials delivered by Contractor and for which Agency may be subject to a license must be approved in advance and in writing by Agency. If Contractor desires to include open source materials, Contractor shall:
- 11.5.1** Notify Agency in writing that the System contains open source materials;
  - 11.5.2** Identify the specific portion of the System that contain open source materials; and
  - 11.5.3** Provide a copy of the applicable license for each open source item to Agency.
- 11.6 Agency Intellectual Property.** Agency owns all Agency Intellectual Property, including Agency Data and background information provided to or collected by Contractor pursuant to any Transaction Document. Agency grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Agency Intellectual Property, Agency Data and background information, and Work Product only to fulfill the purposes of each Transaction Document entered into hereunder. Agency's license to Contractor is limited by the term of the Transaction Document under which Contractor provides the Agency Intellectual Property and the confidentiality obligations set forth in this Agreement.
- 11.7 No Rights.** Except as expressly set forth in this Agreement or a Transaction Document, nothing in this Agreement or a Transaction Document may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Agreement or a Transaction Document, nothing in this Agreement or a Transaction Document may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.
- 11.8 No Rights in Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without



prior written consent. Each party grants only the licenses and rights specified in this Agreement and in Transaction Documents.

**11.9 Competing Services.** Subject to the provisions of this Section 11, and Contractor's obligations with respect to Confidential Information, including as defined in Section 12, nothing in this Agreement or any Transaction Document precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Agreement, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided under Transaction Documents entered into hereunder, irrespective of their similarity to the Deliverables. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under Transaction Documents free of any use restriction or payment obligation to the other.

**11.10 Ownership of Hardware.** Unless agreed otherwise in a Transaction Document, all Hardware delivered to Agency by Contractor pursuant to the Transaction Document will be owned exclusively by Agency, after payment received from Agency. Unless otherwise agreed to by the Parties with respect to a specific item of Hardware, Title to the Hardware will pass on the date of Final Acceptance under the Transaction Document; provided that Title to any Hardware delivered under a Transaction Document for which there is no Final Acceptance of the Services under Transaction Document shall pass to Agency upon Agency's Acceptance of the Hardware.

**11.11 Software Escrow.**

**11.11.1** Within thirty (30) Calendar Days of a written request from Agency to arrange for software escrow, Contractor shall propose to Agency a mutually agreeable, commercially reasonable arrangement to escrow (collectively, "Deposited Programs"):

**11.11.2** The source code for Contractor Intellectual Property and Third Party Intellectual Property that comprises the System (to the extent such Third Party Intellectual Property source code can be obtained using commercially reasonable efforts), and the source code for any Work Product that is Software, including source code for any interfaces developed by Contractor (collectively, the "System Software") as are required for the System to function in accordance with the Requirements, in such format that will allow Agency to build and compile useful object code;

**11.11.2.1** Any and all updates, modifications, revisions, and enhancements of the System Software; and

**11.11.2.2** Any and all Documentation pertaining to source code for the System Software, including the technical specifications and documents, data conversion guidelines and instructional tools.

- 11.11.3** Upon the parties' acceptance and written approval of such proposed escrow arrangement and its approval by DOJ and the federal government if required, Contractor and Agency will promptly execute a three-party escrow agreement with the selected escrow agent which will govern the terms of the escrow arrangement. The escrow agreement must authorize the escrow agent to release the Deposited Programs to Agency upon the occurrence of any of the following:
- 11.11.3.1** Source code for any or all material part of the Deposited Programs is generally made publicly available by Contractor, with or without additional cost, to other users of comparable software; or
  - 11.11.3.2** Contractor's cessation, for any reason, to do business; or
  - 11.11.3.3** Contractor discontinues offering maintenance services for the System or the Deposited Programs; or
  - 11.11.3.4** Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, and same has not been discharged or terminated without any prejudice to Agency's rights or interests under this Contract within sixty (60) Calendar Days; or
  - 11.11.3.5** Any other event or circumstance occurs that demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to Agency under this Contract, the escrow agreement or any maintenance or support agreement between the parties.
- 11.11.4** The copies of the Deposited Programs placed in escrow must be reproduced and maintained on magnetic tape or disk using a commonly accepted data recording protocol. When a change is made to the Deposited Programs by or on behalf of Contractor, during the term of the escrow agreement, the revised Deposited Programs, including the change, must be delivered to the escrow agent not later than sixty (60) Calendar Days after the change is effected by or on behalf of Contractor. Contractor shall allow Agency to periodically examine the escrowed source code for the Deposited Programs to verify it is current and complete.
- 11.11.5** Contractor shall pay the fees of the escrow agent. The term of the escrow agreement shall be no less than the term of this Agreement, unless Agency permits earlier termination of the escrow agreement.
- 11.11.6** Upon receipt of the Deposited Programs by Agency pursuant to the escrow agreement entered into under this section, Agency shall treat the Deposited Programs as confidential information to the fullest extent authorized by the Oregon Public Records Law. Ownership of the Deposited Programs will be in accordance with Sections 11.1 through 11.9, unless ownership is specifically

transferred otherwise. Upon release of the Deposited Programs as provided for herein, Agency and its consultants and contractors will have a perpetual, irrevocable license to use, reproduce, prepare derivative works based on, perform and display the Deposited Programs in conjunction with and to update, modify, and otherwise support the System.

## **12. CONTRACTOR'S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE**

**12.1 Confidential Information.** Contractor acknowledges that it and its employees, agents, or subcontractors may, in the course of its communications with Agency regarding this Agreement and any Transaction Document and in the performance of Services under Transaction Documents, be exposed to or acquire information that is confidential to Agency, Counties, System users, and individuals. Any and all information of any form obtained by Contractor or its employees, agents, or subcontractors in the course of its communications with Agency regarding this Agreement and any Transaction Document and in the performance of Services under Transaction Documents is deemed to be confidential information of Agency ("Confidential Information"). For the avoidance of doubt, Agency Data is Confidential Information. Contractor shall treat any reports or other documents or items 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) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Agreement; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the Agreement Effective Date; (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 employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**12.2 Non-Disclosure.** Contractor, its employees, agents, and subcontractors shall hold Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise each of its employees 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 Agreement or any Transaction Document, 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, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person,

except in accordance with this Agreement, and that upon termination of this Agreement 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 Agreement or a Transaction Document, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

- 12.3 Non-Disclosure Agreement.** Contractor shall, upon Agency's request, obtain executed non-disclosure agreements in a form satisfactory to Agency from each Contractor Staff.
- 12.4 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.
- 12.5 Injunctive Relief.** Contractor acknowledges that breach of this Section 12, including disclosure of any Confidential Information, will 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.
- 12.6 Publicity.** Contractor agrees that it will not disclose the form, content or existence of this Agreement or any Deliverable in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with 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. Notwithstanding the foregoing, Agency acknowledges that Contractor shall disclose the existence of this Agreement (if awarded) within its website.

### **13. PROPRIETARY INFORMATION; OREGON PUBLIC RECORDS LAWS**

- 13.1. Non-Disclosure.** Agency will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Agreement, each Transaction Document, and applicable state and federal law. Contractor acknowledges and agrees that any obligation of Agency to maintain the confidentiality of Contractor's proprietary information is conditioned by and subject to Agency's obligations under the Oregon Public Records Laws, including ORS 192.311 to 192.478, which may require disclosure of proprietary information as a "public record" unless exempt under ORS

192.345 or ORS 192.355, and the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170.

- 13.2. Definition.** Contractor proprietary information is any information marked or designated in writing by Contractor as “confidential” prior to initial disclosure, or information disclosed orally that is confirmed in writing as “confidential” within 10 Calendar Days of disclosure, or information that is reasonably contemplated to be deemed confidential in accordance with the law (i.e. software and any related source code, object code, application data files) without regard to any designation of “confidential”.
- 13.3. Permitted Disclosures.** Agency may disclose Contractor proprietary information to its External QA Consultant, any third parties providing security testing or security reviews of the System on behalf of Agency, and to State and federal oversight authorities to make required reports, to comply with requests for information made pursuant to the Oregon Public Record Law, or to comply with an audit.
- 13.4. Public Records Law.** Agency may disclose and provide copies of Contractor proprietary information to the extent disclosure is required by the Oregon Public Records Law (including ORS 192.311 to 192.478). If Agency receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor proprietary information, Agency will notify Contractor within a reasonable period of time of the request. Contractor is exclusively responsible for defending Contractor’s position concerning the confidentiality of the requested information. Notwithstanding the foregoing, while Agency is not required to actively assist Contractor in opposing disclosure of proprietary information, Agency will cooperate in good faith to the extent reasonably practicable with Contractor’s efforts to protect its proprietary information.
- 13.5. Exclusions.** The confidentiality obligations imposed by this section do not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information known to the recipient prior to the Agreement Effective Date without obligation of confidentiality; (iv) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Agency is required to disclose Contractor proprietary information under clause (v), Agency will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests
- 13.6. Injunctive Relief.** Agency acknowledges that Agency’s use and disclosure of Contractor’s proprietary information not in accordance with this Section 13 will cause irreparable injury to Contractor that is inadequately compensable in damages. Accordingly, Contractor may seek and obtain injunctive relief against the breach or threatened breach of this Section 13. Agency acknowledges and agrees that the

covenants contained herein are necessary for the protection of the legitimate business interests of Contractor and are reasonable in scope and content.

#### **14. AGENCY DATA; INFORMATION SECURITY AND HOSTING SERVICES; SERVICE LOCATIONS**

**14.1. Ownership of Agency Data.** All Agency Data is, or will be, and will remain the property of Agency. Without Agency's approval (in its sole discretion), Agency Data will not be, (i) used by Contractor or Contractor Agents other than in connection with providing the Services, (ii) disclosed (except as otherwise permitted by Section 12), sold, assigned, leased or otherwise provided to third parties by Contractor or Contractor Agents or (iii) commercially exploited by or on behalf of Contractor or Contractor Agents. Contractor hereby irrevocably assigns, transfers and conveys, and will cause Contractor Agents to assign, transfer and convey, to Agency without further consideration all of its and their right, title and interest in and to Agency Data. Upon request by Agency, Contractor will execute and deliver, and will cause Contractor Staff to execute and deliver, any documents that may be necessary or desirable under any Law to preserve, or enable Agency to enforce, its rights with respect to Agency Data.

**14.2. Return of Agency Data.** Subject to any specific data or file retention obligations set forth in the Agreement, upon request by Agency at any time during the term of the Agreement and upon expiration or termination of this Agreement, Contractor will (i) within 30 Calendar Days of such request or expiration or termination of this Agreement, return to Agency, in the format and on the media requested by Agency, all or any part of Agency Data and (ii) use commercially reasonable efforts to erase or destroy all or any part of Agency Data in Contractor's possession, in each case to the extent so requested by Agency. Agency Data that Contractor retains in accordance with the terms of this contract or that Contractor is unable to erase or destroy using commercially reasonable efforts pursuant to the previous sentence will continue to be subject to the provisions of this Section.

**14.3 Contractor Service Locations.** Contractor shall provide the Services to Agency from the Contractor Service Locations specified in each Transaction Document and any other location for which Contractor has received Agency's approval, which it shall not unreasonably withhold; provided, however, that Agency's approval may be given in Agency's sole discretion in respect of any Contractor Service Location from which Contractor proposes to provide Hosting Services. All Contractor Service Locations must be physically located within the geographic boundaries of the United States.

**14.4 Physical Safety, Environmental and Security Procedures.** Contractor will maintain and enforce at the Contractor Service Locations Contractor's standard physical safety, environmental and security procedures applicable to and in effect for such Contractor Service Location that are at least equal to the higher of (1) the highest of those maintained by similarly situated information technology service providers providing substantially similar services as required under Transaction Documents entered into under this Agreement, and (2) any higher standard agreed upon by the Parties, including the information security and Hosting Services requirements described in Exhibit B.

**14.5 Project Staff.** Contractor will, and will cause each Contractor Agent to, comply with Agency's information security policies at all locations, whether Agency premises or Contractor premises, to which they have access in connection with the performance of Services hereunder.

**14.6 Agency Premises.** Contractor will comply with all the rules and regulations established by Agency for access to and activities in and around premises controlled by Agency.

**14.7 Information Security**

**14.7.1** Contractor acknowledges that Agency has established, and during the Term may amend in accordance with subsection 14.7.2 of this Section, minimum levels of security for information residing on Agency Systems or for Agency Data and other Confidential Information of Agency residing on the Contractor Systems.

**14.7.2** Contractor shall ensure that the Services and the System comply with the information security requirements and the Hosting Services requirements set forth in Exhibit B. Agency will have the right to amend these security and Hosting Services requirements on 30 days' notice to Contractor or such shorter notice period as required in order to comply with law. If Agency amends such security or Hosting Services requirements applicable to a Transaction Document after the applicable Transaction Document Effective Date, Contractor will implement such amendments in the provision of the Services under such Transaction Document and the Parties will use the Change Control Procedures to address the cost of, and to document any operational changes associated with, any Change resulting from such amended requirements.

**14.8 Identity Theft.** In the performance of its obligations under this Agreement and Transaction Documents, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11). Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Information Protection Act, ORS 646A.600-646A.628.

**14.8.1** In addition to and without limiting the generality of Sections 12.1 and 12.2, Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Agreement or a Transaction Document. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

**14.8.2** Contractor shall within 2 hours of its discovery report to the Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Agreement or a Transaction Document.

**14.8.3** Contractor shall require the compliance of its employees, agents, and subcontractors with this Section 14.6.

**14.9 Hosting Services.** Contractor shall at all times provide any Hosting Services set forth in a Transaction Document that comply with Exhibit B to the Agreement.

**14.10 Notice of Breach.** In the event Contractor or Contractor Agents discovers or is notified of a breach or potential breach of security relating to Agency Data, Contractor will promptly but in any event within two hours of becoming aware of the breach or potential breach (1) notify the Agency's Authorized Representative for the Agreement of such breach or potential breach and (2) if the applicable Agency Data was in the possession of Contractor or Contractor Agents at the time of such breach or potential breach, Contractor will (a) investigate and remedy the technical causes and technical effects within the scope of the services of the breach or potential breach and (b) provide Agency with assurance satisfactory to Agency that such breach or potential breach will not recur. For the avoidance of doubt, in the event that Agency determines that any such breach or potential breach of security involving Agency Data that requires notification to any individual or entity Agency will have sole control over the timing, content, and method of such notification, subject to Contractor's obligations under applicable law.

**14.11 Third Party Testing.** Agency may conduct independent security monitoring of the System and Hosting Services, and periodic security testing of the System and Hosting Services, using its own resources, by engaging reputable third party information security testing firms, or any combination of the foregoing. Such monitoring and testing may include, without limitation, penetration testing and other testing designed to discover and exploit security deficiencies in the System or Hosting Services. Agency will provide advance notice of any such testing.

## **15. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**15.1 Contractor's General Representations and Warranties.** Contractor represents and warrants to Agency that:

**15.1.1** Contractor has the power and authority to enter into and perform this Agreement and each Transaction Document.

**15.1.2** This Agreement and each Transaction Document, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms.



- 15.1.3** Contractor will, at all times during the Term, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services.
- 15.1.4** Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services will not violate any such law, ordinance, regulation or order.
- 15.1.5** Contractor's performance under this Agreement and each Transaction Document to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform Services under this Agreement and Transaction Documents entered into hereunder.
- 15.1.6** To the best of Contractor's knowledge, after due inquiry, for a period of no fewer than six (6) calendar years preceding the Agreement Effective Date, faithfully has complied with:
- 15.1.6.1** All tax laws of State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
  - 15.1.6.2** Any tax provisions imposed by a political subdivision of 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;
  - 15.1.6.3** Any tax provisions imposed by a political subdivision of State that applied or apply to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
  - 15.1.6.4** Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- 15.1.7** Contractor has no undisclosed liquidated and delinquent debt owed to State or any department or agency of State.

**15.2 Contractor's Performance Warranties.** Contractor represents and warrants to Agency that:

- 15.2.1** Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in each Transaction Document in

accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Agency pursuant to Transaction Documents.

- 15.2.2** Through the expiration of any Warranty Period, all Deliverables delivered by Contractor to Agency pursuant to the Transaction Document, and the System as a whole, will materially conform to Acceptance Criteria set forth in the Transaction Document and with any Documentation provided by Contractor pursuant to such Transaction Document, and shall be free from error or Defect that materially impairs their use, and be free from material defects in materials, workmanship, or design.
- 15.2.3** Contractor shall comply with the standards established by the Project Management Institute (PMI), as described in the Project Management Body of Knowledge (PMBOK), the Software Engineering Institute.
- 15.2.4** Except as otherwise provided in this Agreement or a Transaction Document, Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.
- 15.2.5** Except as otherwise set forth in this Agreement or a Transaction Document, any subcontractors performing work for Contractor under this Agreement 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 Agreement or any Transaction Document.
- 15.2.6** Contractor will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program that at minimum complies with the requirements of the Oregon Identity Theft Protection Act (ORS 646A.600 et. seq.) and the Agency's information security policies set forth in Exhibit B to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control.
- 15.2.7** The System and any enhancements, modifications, or fixes, at the time of delivery and installation, will be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this Agreement and each Transaction Document.

Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Software expressly permitted by the terms and conditions by the license under which it was provided.

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

## **16. INDEMNITIES AND INSURANCE**

**16.1 General Indemnity.** Contractor shall defend, save, hold harmless, and indemnify State and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever, including personal injury, death, damage to real property and damage to tangible or intangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Agreement and any Transaction Document, including: (i) any claim that Contractor, a subcontractor, or Contractor's staff or a subcontractor's staff are employees of State or Agency for any reason, and (ii) any claim against State or Agency, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this Agreement and in one or more Transaction Documents. Without limiting the generality of the foregoing, Contractor will have no obligation to indemnify Agency or State from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of Agency or State, and their officers, employees or agents.

**16.2 IP Indemnity.** In addition to and without limiting the generality of Section 16.1, Contractor expressly agrees to indemnify, defend and hold State and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables, the Services, or the System or use thereof 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. If Contractor believes at any time that the Deliverables, Services, or the System infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Agency's prior written consent, which Agency will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Agency the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any

replacement or modification made pursuant to the foregoing, the System continues to function in material conformance with the specifications set forth in this Agreement and in Transaction Documents and the Services remain in material compliance with the Agreement and Transaction Documents. Contractor's failure or inability to accomplish any of the foregoing will be deemed a material breach of this Agreement and each Transaction Document under which Contractor has delivered an allegedly infringing Services or Deliverables, and Agency may pursue any rights and remedies available to it under this Agreement, including termination. Contractor will not be liable under this Section 16.2 for any claim for infringement based solely on the following:

**16.2.1** Agency's modification of the Deliverables or the System other than as contemplated by this Agreement or a Transaction Document, a Deliverable, the System specifications, or as otherwise authorized by Contractor in writing;

**16.2.2** Use of the Deliverables or the System in a manner other than as contemplated in this Agreement and Transaction Documents, a Deliverable, the System specifications, or as otherwise authorized by Contractor in writing; or

**16.2.3** Use of the Deliverables or the System in combination, operation, or use of with other products other than as contemplated by this Agreement and Transaction Documents, a Deliverable, the System specifications, or as otherwise authorized by Contractor in writing.

**16.3 Control of Defense and Settlement.** Contractor is not required to indemnify Agency as set forth in Sections 16.1 or 16.2 for any amounts for which Contractor would not be liable but for Agency's failure to provide Contractor prompt notification of the related claim or potential claim upon becoming aware of such claim. Contractor will have control of the defense and settlement of any claim that is subject to Section 16.1 or Section 16.2; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the State of Oregon or any agency of State, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor will Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. State may, at its election and expense, assume its own defense and settlement in the event that State determines that Contractor is prohibited from defending State, is not adequately defending State's interests, or that an important governmental principle is at issue and State desires to assume its own defense.

**16.4 Damages to State Property and Employees.** Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible or intangible personal property of the State of Oregon or any of its employees resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Agreement and each Transaction Document.

**16.5 Data and Network Services.** Except to the extent that a claim or loss results from the negligent, reckless or intentional acts or omissions of Agency, or any third party that is not either a subcontractor of Contractor, or selected by Contractor to provide services related to or any component of the System, Contractor shall assume liability for all claims or losses related to data loss or breach of security caused directly or indirectly by or resulting from the System or Services provided by Contractor.

**16.6 Insurance.** Contractor shall provide insurance as required by Exhibit C.

## **17. LIMITATION OF LIABILITY**

**17.1** EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 16.1, GENERAL INDEMNITY (ii) SECTION 16.2, IP INDEMNITY (iii) SECTION 16.5, DATA AND NETWORK SERVICES (iv) SECTION 12, CONTRACTOR'S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE (v) SERVICE CREDITS DELIVERABLE CREDITS RECEIVED ASSESSED UNDER THIS CONTRACT, OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE GROSS NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE FOR ANY CAUSE WHATSOEVER IS LIMITED TO ONE AND ONE HALF TIMES THE CUMULATIVE TRANSACTION DOCUMENT MAXIMUM-NOT-TO-EXCEED COMPENSATION FOR ALL TRANSACTION DOCUMENTS IN EFFECT AT THE TIME THE LIABILITY FIRST AROSE.

**17.2** EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 16.1, GENERAL INDEMNITY (ii) SECTION 16.2, IP INDEMNITY (iii) SECTION 16.5, DATA AND NETWORK SERVICES, (iv) SECTION 12, CONTRACTOR'S DUTIES OF CONFIDENTIALITY AND NON-DISCLOSURE, OR SECTION 13, OR (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE GROSS NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

## **18. EVENTS OF DEFAULT**

**18.1 Default of Agreement by Contractor.** Contractor will be in default under this Agreement if:

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

**18.1.2** Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or

certificate within thirty (30) Business Days after delivery of Agency's notice or such longer period as Agency may specify in such notice; or

**18.1.3** Contractor commits any material breach of any covenant, warranty, obligation or certification under this Agreement, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Agreement (other than to the extent Contractor is legally entitled to withhold its performance in response to Agency's breach), and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected, or Contractor fails to commence efforts to correct such breach, default or failure to perform, by reasonable written assurances of performance within thirty (30) Business Days after delivery of Agency's notice or such longer period as Agency may specify in such notice; or

**18.1.4** Contractor is in default of one or more Transaction Documents; or

**18.1.5** Contractor has liquidated and delinquent debt owed to State or any department or agency of State.

**18.2 Default of Transaction Document by Contractor.** Contractor will be in default under a Transaction Document if Contractor commits any material breach of any covenant, warranty, obligation or certification under the Transaction Document, fails to perform the Services set forth in the Transaction Document in conformance with the specifications and warranties provided herein and in the Transaction Document, or clearly manifests an intent not to perform future obligations under the Transaction Document, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected, or Contractor fails to commence efforts to correct such breach, default or failure to perform, by reasonable written assurances of performance within thirty (30) Business Days after delivery of Agency's notice or such longer period as Agency may specify in such notice. Should Contractor commence reasonable efforts to cure such defect, Agency may extend the cure period stated above to afford Contractor time to fully cure the default; provided that Contractor continues to exert reasonable efforts to cure the default. Upon such correction, Contractor shall be deemed to have never been in default in accordance with the terms herein.

**18.3 Default of Transaction Document by Agency.** Agency will be in default under a Transaction Document if:

**18.3.1** Agency fails to pay Contractor any amount pursuant to the terms of this Agreement and the Transaction Document, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

**18.3.2** Agency commits any other material breach or default of any covenant, warranty, or obligation under the Transaction Document, fails to perform its commitments

thereunder within the time specified or any extension thereof, and Agency fails to cure such failure within thirty (30) Business Days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

## **19. REMEDIES FOR DEFAULT**

**19.1 Agency's Remedies for Default of Agreement.** In the event Contractor is in default of the Agreement under Section 18.1, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including termination of this Agreement under Section 20.3 and any other remedies specifically set forth in this Agreement.

**19.2 Agency's Remedies for Default of Transaction Document.** In the event Contractor is in default of a Transaction Document under Section 18.2, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and the Transaction Document and at law or in equity, including

**19.2.1** Withholding or offsetting payment for erroneous invoices or for Services that Contractor is obligated but has failed to perform in accordance with this Agreement;

**19.2.2** With respect to Hardware and Software for which Agency has paid before Final Acceptance under the Transaction Document, returning the Hardware and Software to Contractor in exchange for a return of all moneys previously paid for such Hardware and Software, and initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; This provision specifically excludes any customized equipment which cannot be returned to Contractor.

**19.2.3** Assessment of damages and Service Credits, Fee Reductions, or Deliverable Credits as a result of Contractor's failure to provide Deliverables and Services in accordance with the Transaction Document. If Agency recovers actual damages in addition to Service Credits, Fee Reductions, and Deliverable Credits, Agency will reduce such actual damages by the amounts received as Service Credits, Fee Reductions, and Deliverable Credits for the same event(s) causing the actual damages;

**19.2.4** Exercise of its right of setoff;

**19.2.5** Undertake collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to State or any department or agency of State. Offsets or garnishment may be initiated after Contractor has been given notice if required by law; and

**19.2.6** Any other remedies specifically set forth in this Agreement or the Transaction Document.

**19.3 Agency Remedies for Repetitive Service Level Agreement Failures.** Notwithstanding the right of Agency to assess Service Level Credits, Fee Reductions, or Deliverable Credits, Agency will have the right to pursue remedies for default under a Transaction Document if Contractor commits repeated or excessive failures to meet any individual or combination of performance standards or Service Levels.

**19.4 Tax Compliance Remedies.** The Oregon 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 Contractor's compensation under any or all Transaction Documents, or (ii) exercising a right of setoff against Contractor's compensation under any or all Transaction Documents 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.

**19.5 Remedies Cumulative.** These Agency remedies 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 Agency terminates this Contract for default, and the Parties agree in a written settlement or if a court of competent jurisdiction determines that Contractor was not in default under Section 18.1 or 18.2, the rights and obligations of the Parties will be the same as if Agency terminated this Agreement or a Transaction Document, as applicable, pursuant to Section 20.1 or 20.2.

**19.6 Contractor's Remedies.** In the event Agency terminates a Transaction Document as set forth in Section 20.2, or in the event Agency is in default under Section 18.2 and whether or not Contractor elects to exercise its right to terminate the Transaction Document under Section 20.5, Contractor's sole monetary remedy will be a claim for (i) any unpaid invoices for Deliverables completed, delivered and Accepted under the Transaction Document; and, (ii) for incomplete Deliverables an amount calculated by determining the percentage of Services completed for each unpaid Deliverable and applying that percentage to the fixed price for the Deliverable as set forth in the Transaction Document and any authorized expenses incurred. If previous amounts paid to Contractor under the Transaction Document exceed the amount due to Contractor under this section, Contractor shall pay any excess to Agency upon written demand.

## **20. TERMINATION**

**20.1 Agency's Right to Terminate the Agreement other than for Default.** Agency may, at its sole discretion, terminate this Agreement, as follows:

**20.1.1** Agency may terminate this Agreement for convenience upon at least thirty (30) Business Days' prior written notice to Contractor.



- 20.1.2** Agency may terminate this Agreement if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Agreement is prohibited or Agency is prohibited from paying for such Services from the planned funding source.
- 20.2 Agency's Right to Terminate a Transaction Document other than for Default.** Agency may, at its sole discretion, terminate a Transaction Document, as follows:
- 20.2.1** Agency may terminate a Transaction Document for convenience upon at least thirty (30) Business Days' prior written notice to Contractor.
- 20.2.2** Agency may terminate a Transaction Document if Agency fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Services as set forth in the Transaction Document.
- 20.2.3** Agency may terminate the Transaction Document if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services described in the Transaction Document is prohibited or Agency is prohibited from paying for such Services from the planned funding source.
- 20.3 Agency's Right to Terminate Agreement for Cause.** In addition to any other rights and remedies Agency may have under this Agreement, Agency may terminate this Agreement and each then effective Transaction Document, or any combination of then effective Transaction Documents, immediately upon written notice to Contractor of Contractor's default under Section 18.1.
- 20.4 Agency's Right to Terminate a Transaction Document for Cause.** In addition to any other rights and remedies Agency may have under a Transaction Document, Agency may terminate a Transaction Document, in whole or in part, immediately upon written notice to Contractor of Contractor's default under Section 18.2.
- 20.5 Contractor's Right to Terminate for Cause.** Contractor may terminate a Transaction Document upon Agency's default under Section 18.3.
- 20.6 Mutual Termination.** The parties may agree to terminate this Agreement or any Transaction Document upon at least thirty (30) Calendar Days' prior written agreement.
- 20.7 Extension of Termination Date.** In addition to Agency's right to extend the term of the Agreement or any Transaction Document under Section 10, Agency may extend the effective period of the Agreement and any Transaction Document one or more times as it elects in its discretion, provided that the total of any extension to the term of any single Transaction Document may not exceed 180 (one hundred eighty) Calendar Days following the termination date in place immediately prior to the initial extension under

this section. Agency will provide notice of an extension under this section to Contractor within 30 (thirty) Calendar Days of the then-scheduled Agreement termination date.

**20.8 Return of Property; Payment for Services Performed.** Upon termination of this Agreement or any Transaction Document for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property related to all terminated Transaction Documents, which includes Agency's Confidential Information, Agency Data, and any Deliverables for which Agency has made payment under the terminated Transaction Documents in whole or in part that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Any property or Deliverable returned or delivered to Agency pursuant to this section may be provided without the warranties set forth in Section 15.2, unless the Deliverable is Accepted. Furthermore, if Agency terminates a Transaction Document for convenience and Contractor has performed Services for certain Deliverables (in whole or in part) and has not yet received payment, Contractor shall be entitled to payment for those Deliverables based on the percentage of completion and the payment amounts for said Deliverables as established in this Agreement.

## **21. STOP-WORK ORDERS**

**21.1. Stop Work Order.** Agency may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work required under any, all, or any combination of Transaction Documents for a period of up to ninety (90) Calendar Days after the date of the notice (a "Stop Work Order"), or for any further period to which the parties may agree. Upon receipt of the Stop Work Order, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the Services affected by the Stop Work Order. Within a period of ninety (90) Calendar Days after issuance of the Stop Work Order, or within any extension of that period to which the parties have agreed, Agency will either:

**21.1.1** Cancel or modify the Stop Work Order by a supplementary written notice; or

**21.1.2** Terminate the Transaction Documents subject to the Stop Work Order as permitted by the provisions of Section 20.2.

**21.2** If the Stop Work Order is canceled, or Agency otherwise issues a notice directing Contractor to resume Services, Agency may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete the Services set forth in any Transaction Document subject to the Stop Work Order and corresponding changes to the charges under any Transaction Document subject to the Stop Work Order by a duly executed amendment, inclusive of any ramp-up time required to for Contractor to resume Services. Any such Contractor request must be in the form of a Change Request under Section 10.1 and must be received by Agency within ten (10)

Business Days of Agency's notice canceling the Stop Work Order or directing Contractor to resume Services.

- 21.3** The existence of one or more currently effective Stop Work Orders will not preclude Agency from issuing one or more additional Stop Work Orders.

## **22. COMPLIANCE WITH APPLICABLE LAW**

**22.1 Compliance with Law Generally.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor, the Agreement, and each Transaction Document. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or a Transaction Document: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA); (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and any Transaction Document and required by law to be so incorporated. Agency's performance under each Transaction Document is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

**22.2 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 its performance under this Agreement and each Transaction Document, including the procurement process relating to this Agreement, which constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Agreement, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement or any Transaction Document entered into hereunder. 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 State or Agency under this Agreement, a Transaction Document, or any other provision of law.

**22.3 Tax Compliance.** Contractor certifies that it has complied with the tax laws of State and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the Term and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 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.

Any failure to comply with the provisions of this subsection 22.3 constitutes a material breach of this Agreement. Further, any failure to comply with Contractor's warranty set forth in Section 15.1.6 also constitutes a material breach of this Agreement. Any failure to comply entitles Agency to terminate this Agreement and each then-effective Transaction Document, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- Termination of this Agreement and any or all Transaction Documents then in effect;
- Exercise of the right of setoff, or garnishment as applicable, 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 may recover any and all damages suffered as the result of Contractor's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

**22.4 Tax Reporting.** This Agreement and each Transaction Document entered into hereunder 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 Contractor's compensation under any or all Transaction Documents, or (ii) exercising a right of setoff against Contractor's compensation under Transaction Documents 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.

**22.5 Election Laws.** Contractor shall perform the Services, including its obligations to design, implement, maintain and enhance the System in compliance with state and federal laws governing voter registration and the conduct and administration of elections, including without limitation the Help America Vote Act of 2002 (Pub. Law 107-252), the National

Voter Registration Act of 1993 (Pub. Law 103-31), Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (Pub. Law 99-410), the Military and Overseas Voter Empowerment Act (Subtitle H of Public Law 111-84), and Oregon Revised Statutes Chapters 246 through 260.

**22.6 Changes in Law Affecting Performance.** Each party hereby agrees to immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Agreement and Transaction Documents. Each party shall monitor changes in federal and state laws, ordinances, and regulations applicable to its performance hereunder, and will be deemed aware of such changes within thirty (30) Calendar Days of the enactment of any such change.

## **23. DISPUTE RESOLUTION**

**23.1 Litigation.** Any claim, action, suit, or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Agreement or any Transaction Document must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. LICENSOR HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURT ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Agreement or a Transaction Document 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, or (ii) consent by the State of Oregon to the jurisdiction of any court.

**23.2 Governing Law.** This Agreement and each Transaction Document is governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

## **24. ORDER OF PRECEDENCE**

This Agreement consists of the following documents that are listed in descending order of precedence:

The terms and conditions of this Agreement, less its Exhibits;

Exhibit F, Federal Terms and Conditions;

Exhibit B, Security Requirements; Hosting Services;

Exhibit C, Insurance;

Exhibit D, Contractor's Personnel / Authorized Representative / Key Persons;

Exhibit E, Agency's Personnel / Authorized Representative; and

Exhibit A, Form of Transaction Document.

The aforementioned Exhibits are by this reference incorporated into this Agreement. To the extent provisions contained in more than one of the foregoing documents apply in any given situation, the parties agree: (i) to read such provisions together whenever possible to avoid conflict, and (ii) to apply the foregoing order of precedence only in the event of an irreconcilable conflict.

**25. RECYCLING**

To the maximum extent economically feasible in the performance of the Agreement and each Transaction Document entered into hereunder Contractor shall 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).

**26. RECORDS MAINTENANCE AND ACCESS**

Contractor shall maintain all financial records and other records relating to its performance under this Agreement and each Transaction Document in accordance with generally accepted accounting principles and in such a manner as to clearly document Contractor’s performance. Contractor acknowledges and agrees that the Oregon Secretary of State, the federal government, and their duly authorized representatives will have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, and to related System components and tools (including hardware and software), to perform examinations and audits and make excerpts and transcripts, including System forensics. Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement or any Transaction Document, whichever date is later.

**27. AUDITS AND REPORTING.**

**27.1. Service Audits.** Upon notice from Agency, Contractor and Contractor Agents will provide (A) Agency, (B) Agency’s agents, (C) any external auditors contracted by the Oregon Secretary of State, (D) any Governmental Authority, and (E) any other entity directed to audit Agency by a Governmental Authority((A) through (E), collectively, “Agency Auditors”) with access to and any assistance that they may require with respect to records and those parts or portions of the Contractor’s operations used to perform the Services to the extent necessary and for the purpose of performing audits or inspections of (1) the Services, (2) the business of Contractor relating to the Services, including in each case operational, security, financial and other audits, and (3) for any audit required by a Governmental Authority, any part of Contractor’s operations within the scope of the audit that the Governmental Authority is permitted or authorized to

perform. If any audit by an Agency Auditor results in Contractor being notified that Contractor or Contractor Agents are not in compliance with (a) any law with which Contractor and Contractor Agents are required to comply under this Agreement, or (b) any other requirements, including compliance with procedures or controls, set forth in this Agreement, Contractor will, and will cause Contractor Agents to, promptly take actions to comply with such law or other requirement.

**27.2. Fee Audits.** Agency Auditors may audit the charges charged to Agency to determine if such charges are accurate and in accordance with this Agreement. Upon notice from Agency, Contractor will provide Agency Auditors with access to such financial records and supporting documentation as may be requested by Agency in order to make such determination.

**27.2.1.** If, as a result of such audit, Agency determines that Contractor has overcharged Agency, Agency will notify Contractor of the amount of such overcharge and Contractor will promptly pay to Agency the amount of the overcharge, plus interest calculated from the date of receipt by Contractor of the overcharged amount until the date of payment to Agency.

**27.2.2.** In addition, in the event any such audit reveals an overcharge to Agency of five percent or more of the audited charges under this Agreement, Contractor will, at Agency's option, issue to Agency a credit against future charges due hereunder, or reimburse Agency, for the actual and reasonable cost of such audit.

**27.3. Contractor Audits.**

**27.3.1.** Contractor will maintain an internal audit function to sufficiently monitor the processes and systems used to provide the Services and to ensure compliance with the Agreement, including the Agency's information security standards set forth in Exhibit B. Contractor will provide to Agency copies of any of Contractor's internal audits related to Contractor's processes and systems used to provide the Services.

**27.3.2.** If any Contractor audit reveals information related to an error or deficiency that could reasonably be expected to have an adverse financial or operational impact on Agency's receipt of the Services, Contractor will (1) provide a summary of such audit results to Agency and (2) to the extent Contractor is responsible for such error or deficiency, Contractor will take corrective action to rectify any such error or any deficiencies and notify Agency when such error or deficiency has been rectified.

**27.4. SOC 2, Type 2 SSAE 18 Audits.**

**27.4.1.** Without limiting the generality of Section 27.3.1, Contractor will appoint an independent accounting firms that is an American Institute of Certified Public Accountants member firm, or with Agency's approval a non-AICPA member firm, to conduct an annual, Service Organization Controls (SOC) 2, Type 2 SSAE 18 audit (a "SOC 2 Audit") of the Contractor's operations, the control objectives of the SOC 2 Audit shall be at a minimum, equivalent to those required under the General

Accounting Office Federal Information Systems Computer Audit Manual (FISCAM) for performing all work.

**27.4.2.** If the control standards of Contractor or any subcontractor used to provide any of the Services are identified as non-compliant or inadequate or if any material weaknesses or significant deficiencies are identified in the SOC 2 Audit, or any other audit report undisputed by Contractor, then Contractor will promptly bring such control standards into compliance or remedy such material weaknesses or significant deficiencies, as the case may be, at the expense of Contractor and provide Agency with a statement of completion from an authorized signatory of Contractor within 30 days after delivery of any such SOC 2 Audit report or other Contractor-provided or other undisputed audit report identifying such non-compliance, inadequacy, material weakness or significant deficiencies. Agency will have the right to perform additional substantive testing by Agency in connection with such failure to the extent necessary in Agency's opinion to verify Contractor's correction of such failure.

**27.4.3.** Without limiting the generality of this Section, if any SOC 2 Audit reveals a material weakness or significant deficiency in any control standard of Agency or in any control standard of Contractor or a Contractor Agent used to provide any of the Services, Contractor will report such finding to Agency's Internal Audit group within 48 hours of being informed of such material weakness.

**27.5. Agency Audit Inquiries.** Agency may make inquiries from time to time pertaining to audit monitoring activities and Contractor will provide a response to each such inquiry within five Business Days after receipt of such inquiry unless otherwise agreed by the Parties.

**27.6. Cooperation with Audits.** Contractor shall cooperate at its own expense with any entity, including Governmental Authorities, conducting audits of Agency related to the Services that are conducted pursuant to law.

**27.7. Reporting.** Contractor will provide at no additional charge assistance and information requested by Agency to assist Agency in the preparation and presentation of any reports required by law or a Governmental Authority.

## **28. SURVIVAL**

All rights and obligations under this Agreement and each Transaction Document cease upon termination or expiration of this Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Agreement, including without limitation this Section 28, and provisions regarding definitions, Warranty Periods and liabilities, independent Contractor status and taxes and withholding, maximum compensation, ownership and license of intellectual property and Deliverables, Contractor's duties of 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, third party beneficiaries, waiver, headings, and integration.

## **29. TIME IS OF THE ESSENCE**

Contractor agrees that time is of the essence under this Agreement and each Transaction Document with respect to critical path Deliverables and all Milestones identified in Transaction Documents.

## **30. FORCE MAJEURE**

Neither Agency nor Contractor will be liable to the other for any failure or delay of performance of any obligations under a Transaction Document when such failure or delay is wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes, natural disasters, global or localized pandemics, war, riots or strikes. Both parties will make all reasonable efforts to remove or eliminate such a cause of delay or default and upon the cessation of the cause diligently pursue performance of their respective obligations under all affected Transaction Documents. This provision does not excuse Contractor's performance of its Disaster Recovery or Business Continuity obligations, including those set forth in Section 4.3.

If a force majeure event causes Contractor to allocate limited resources among its customers, Contractor will not prioritize other customers over Agency to such a degree that would unequivocally cause Contractor to not timely perform the Deliverables.

## **31. NOTICES**

- 31.1** Except as otherwise expressly provided in this Agreement or a Transaction Document, (i) any communications between the parties hereto or notices to be given in respect of this Agreement must be given in writing to Contractor at the address or number set forth on Exhibit D, and to Agency at the address or number set forth on Exhibit E, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section; and (ii) any communications between the Parties or notices to be given in respect of the Transaction Document must be given in writing to Contractor or Agency at the address or number set forth in the Transaction Document, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section.
- 31.2** Any communication or notice delivered by United States Postal Service, first class mail postage prepaid, will be deemed given five (5) Calendar Days after mailing.
- 31.3** Any communication or notice delivered by email will be deemed given when the recipient responds with a receipt, which may be auto-generated.
- 31.4** Any communication or notice by personal delivery will be deemed given when actually received by the appropriate recipient.

### **32. SEVERABILITY**

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

### **33. COUNTERPARTS**

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

### **34. SUBCONTRACTS AND ASSIGNMENT**

- 34.1** Contractor shall not enter into any subcontracts for any of the Services required under any Transaction Document or assign or transfer any of its interest in this Agreement or a Transaction Document without Agency's prior written consent which will not unreasonably withheld. Agency consent to a subcontract or assignment does not relieve Contractor of any of its duties or obligations under this Agreement or any Transaction Document.
- 34.2** Any proposed use of a subcontractor which is located outside the United States must be called to the specific attention of Agency.
- 34.3** The assignment of this Agreement and any Transaction Document in whole or in part to a successor organization by merger or acquisition does not require the consent of the other. Contractor is also permitted to assign its rights to payments without obtaining Agency's consent.
- 34.4** In the event of Contractor's merger with another entity, or an event of change of control or sale of substantially all of Contractor's assets, then Agency may either (i) permit the associated assignment of rights an delegation of duties under the Agreement and all then-current Transaction Documents, or (ii) terminate the Agreement and each then-current Transaction Document in accordance with Sections 20.1 and 20.2.

### **35. SUCCESSORS AND ASSIGNS**

The provisions of this Agreement and each Transaction Document are binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

### **36. INTENDED BENEFICIARIES**

Agency and Contractor are the only parties to this Agreement and to each Transaction Document and are the only parties entitled to enforce the terms of either this

Agreement or a Transaction Document. Nothing in this Agreement or in any Transaction Document gives, is intended to give, or may 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 or in a Transaction Document and expressly described as intended beneficiaries of the terms of this Agreement or the Transaction Document. Any such third person identified in a Transaction Document will have third-party rights only with respect to the Transaction Document that identifies the third person.

### **37. WAIVER**

The failure of either party to enforce any provision of this Agreement or any Transaction Document, or the waiver of any violation or nonperformance of this Agreement or a Transaction Document in one instance will not constitute a waiver by the party of that or any other provision nor will it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Agreement or a Transaction Document will bind either party unless in writing and signed by both parties and, with respect to Agency's waiver or consent, 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.

### **38. HEADINGS**

The headings in this Agreement are included only for convenience and do not control or affect the meaning or construction of this Agreement.

### **39. INTEGRATION**

This Agreement and attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

### **40. CERTIFICATION**

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

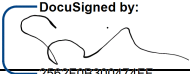
- 40.1** Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding;
- 40.2** The individual signing on behalf of Contractor is authorized to act on Contractor's behalf, has authority and knowledge regarding Contractor's payment of taxes, and to the best of the signatory's knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.620 and ORS

chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply 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 apply 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;

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

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

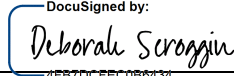
**KnowiNK LLC., Contractor:**

Signature:  Date: 6/29/2021

Printed Name, Title: Scott Leindecker Scott Leindecker

Federal Tax ID: 45-4011089 Oregon Tax ID: 177700193

**The State of Oregon, acting through its Office of Secretary of State:**

Signature:  Date: 7/6/2021

Printed Name, Title: Deborah Scroggin Elections Director

**LEGAL SUFFICIENCY APPROVAL:**

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

Matter: \_\_\_\_\_

## EXHIBIT A – FORM OF TRANSACTION DOCUMENT

This Transaction Document (consisting of this document and its listed Schedules) is entered pursuant to and is subject to the Information Technology Master Services Agreement, dated \_\_\_\_\_ (the “Agreement”), and is between the State of Oregon, acting through its Office of the Secretary of State (Agency), and \_\_\_\_\_ (“Contractor”).

WHEREAS, the Parties entered into the Agreement which contemplates that certain Services to be provided to Agency by Contractor will be described in Transaction Documents;

WHEREAS, Agency wishes to procure the information technology and related services described in this Transaction Document (the “Services”) from Contractor and Contractor wishes to provide such Services to Agency on the terms and conditions set forth in the Agreement and this Transaction Document;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, Agency and Contractor agree as follows:

### 1. Definitions and Construction

- 1.1. **Definitions.** Unless otherwise defined herein, capitalized terms will have the meaning ascribed to them in the Agreement.
- 1.2. **References to Agreement.** The “Agreement” means the Agreement, as it has been or may in the future be amended, modified, supplemented, revised or restated by the Parties.
- 1.3. **References to Transaction Document.** References to “Transaction Document” in this document and its Schedules means this individual Transaction Document only, and does not mean or refer to any other Transaction Document that has been or may in the future become part of the Agreement.

### 2. Term

- 2.1. **Transaction Document Dates.** The effective date of this Transaction Document is [DATE] (the “Transaction Document Effective Date”). Contractor shall provide Services as specified under this Transaction Document until the earlier of [DATE] (the “Transaction Document Expiration Date”) or the termination of this Transaction Document in accordance with the terms of the Agreement. The period from the Transaction Document Effective Date through and including the date of its expiration or termination is the “Transaction Document Term.”

### 3. Services

- 3.1. **Services.** The Services to be performed and Deliverables to be provided under this Transaction Document are set forth in Schedule 1, the Statement of Work.
- 3.2. **Service Locations.** The Service Locations from which Contractor will provide the Services are set forth on Schedule 3 to this Transaction Document.
- 3.3. **Deliverable Review Periods.** [TBN if different than periods set forth in Section 4.6 of the

Agreement.]

**4. Service Levels.**

4.1. The Service Levels and the corresponding Service Credits and the Deliverable Credits applicable to this Transaction Document are set forth in Schedule 2.

**5. Personnel.**

5.1. **Key Personnel.** The Key Personnel for this Transaction Document, including the Contractor's Authorized Representative and Project Manager for the Services Described in this Transaction Document are listed in Schedule 4 to this Transaction Document.

5.2. **Agency Personnel.** Agency's Authorized Representative and Project Manager for the Services described in this Transaction Document are listed on Schedule 5 to this Transaction Document.

5.3. **Approved Subcontractors.** Subcontractors listed in Schedule 6 are hereby approved to perform under this Transaction Document.

**6. Acceptance Testing; Final Acceptance.**

[Insert Acceptance Testing Provisions]

[Insert Final Acceptance Criteria]

**7. Warranties and Warranty Period.**

7.1. **Additional Warranties.** In addition to the representations and Warranties set forth in the Agreement, Contractor hereby makes the following representations and warranties with respect to the Deliverables and Services that are the subject of this Transaction Document:

**[Insert Additional Warranties]**

7.2. **Warranty Period for Deliverables.** [Insert if different than default Warranty Period]

7.3. **Warranty Period for the System.** [Insert if different than default Warranty Period]

7.4. **Warranty Period for Enhancements.** [Insert if different than default Warranty Period]

**8. Licenses**

8.1. **Contractor Intellectual Property.** The licenses for Contractor Intellectual Property that Contractor is required to deliver under this Transaction Document are set forth in Schedule 7 to this Transaction Document.

8.2. **Third Party Intellectual Property.** The licenses for Third Party Intellectual Property that

Contractor is required to deliver under this Transaction Document are set forth in Schedule 8 to this Transaction Document.

**9. Charges.**

9.1. **Payments.** Agency shall pay Contractor the fixed prices set forth in the Statement of Work for Contractor's completion and Agency's Acceptance of the Services and Deliverables Contractor will deliver under this Transaction Document. All invoices and payments will comply with the terms of the Agreement.

9.2. **Transaction Document Maximum-not-to-exceed Compensation.** Notwithstanding any other provision of this Transaction Document to the contrary, the maximum, not-to-exceed compensation that Agency will pay to Contractor under this Transaction Document is \$ \_\_\_\_\_ (the "Transaction Document Maximum Not-To-Exceed Compensation"), which includes payment for any allowable expenses for which Contractor may request reimbursement under this Agreement, subject to increase upon Change Orders.

9.3. **Expenses.** Agency [will/will not] reimburse Contractor for expenses incurred by Contractor in the performance of Services under this Transaction Document.

9.4. **Contingency and Incentive Payments.** [TBN]

**10. Severability.**

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

**11. Counterparts.**

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

**12. Headings.**

The headings in this Transaction Document are included only for convenience and do not control or affect the meaning or construction of this Agreement.

**13. Integration.**

This Transaction Document and attached Schedules 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 Transaction Document.

**14. Certification.**

By signature on this Change Order, the individual signing below on behalf of Contractor certifies under penalty of perjury that: a) the undersigned is authorized to act on behalf of Contractor; and b) the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Change Order and with the same effect as though made at the time of this Change Order.; and b) the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

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

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO AGENCY OBTAINING ALL NECESSARY STATE APPROVALS.

**THE STATE OF OREGON, ACTING THROUGH ITS OFFICE OF SECRETARY OF STATE**

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

Name: \_\_\_\_\_

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

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

**[CONTRACTOR]**

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

Name: \_\_\_\_\_

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

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



Schedule 1  
Statement of Work

Schedule 2  
Service Levels, Service Credits and Deliverable Credits

Schedule 3  
Service Locations

Schedule 4  
Contractor Personnel

Schedule 5  
Agency Personnel

Schedule 6  
Approved Subcontractors

Schedule 7  
Contractor Intellectual Property

Schedule 8  
Third Party Intellectual Property

**EXHIBIT B – SECURITY POLICIES AND HOSTING SERVICES REQUIREMENTS [NOT APPLICABLE]**

**Agency Information Security Policies**

**[Insert]**

**Hosting Services Requirements**

**[Insert]**

## EXHIBIT C – INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Agreement, and shall maintain it in full force and at its own expense throughout the duration of this Agreement, and 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 the State of Oregon and that are acceptable to Agency. Coverage must be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

### 1. INSURANCE REQUIRED.

#### 1.1 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 require and ensure that each of its out-of-state subcontractors complies with these requirements.

#### 1.2 PROFESSIONAL LIABILITY.

Contractor shall provide Technology Errors & Omissions insurance in an amount of not less than **\$3,000,000** per claim covering Contractor's liability arising from acts, errors or omissions in rendering or failing to render computer or information technology services, including the failure of technology products to perform the intended function or serve the intended purpose as set forth in this Agreement. This insurance must include coverage for violation of intellectual property rights including trademark and software copyright, privacy liability, the failure of computer or network security to prevent a computer or network attack, misrepresentations, and unauthorized access or use of computer system or networks. This insurance must also include coverage for unauthorized disclosure, access or use of Agency Data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data and Protected Health Information ("PHI")) in any format. Coverage must extend to Business Associates (if applicable) and independent contractors providing Services on behalf of or at the direction of Contractor.

A primary policy or combination of a primary policy and excess policy is acceptable in order to meet the limits requirement.

**1.3 COMMERCIAL GENERAL LIABILITY.**

Contractor shall provide Commercial General Liability Insurance covering bodily injury, and property damage in a form and with coverage that are satisfactory to State. This insurance must include personal and advertising injury liability, products and completed operations, and contractual liability coverage, in each case arising out of Contractor's negligence, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate.

**1.4 AUTOMOBILE LIABILITY INSURANCE.**

Contractor shall provide Automobile Liability Insurance covering Contractor's business use including 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.

**2. ADDITIONAL INSURED.**

The Commercial General Liability and Automobile Liability insurance required under this Agreement 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 Agreement. 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.

**3. 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 (twenty-four) 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 Agreement, for a minimum of 24 (twenty-four) months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Agreement, or, (ii) The expiration of all Warranty Periods provided under this Agreement.

**4. CERTIFICATE(S) AND PROOF OF INSURANCE.**

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods or performing any Services required under this Agreement. The

Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured as specified in this exhibit. 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 Agreement.

**5. NOTICE OF CHANGE OR CANCELLATION.**

Contractor or its insurer must endeavor to provide at least 30 (thirty) Calendar 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).

**6. INSURANCE REQUIREMENT REVIEW.**

Contractor agrees to periodic review of insurance requirements by Agency under this Agreement and to meet updated requirements as agreed upon by Contractor and Agency.

**EXHIBIT D – CONTRACTOR’S AGREEMENT PERSONNEL [NOT APPLICABLE]**

Subject to Section 7.1, Key Persons, Contractor may update this Exhibit D via written notice to Agency.

Authorized Representative:

Name and Title:  
Phone:  
Email:  
Mailing Address:

Services Manager:

Name and Title:  
Phone:  
Email:  
Mailing Address:

Other Key Persons:

Name and Title:  
Phone:  
Email:  
Mailing Address:

**EXHIBIT E – AGENCY AGREEMENT PERSONNEL [NOT APPLICABLE]**

Agency may update this Exhibit E via written notice to Contractor.

Authorized Representative:

Name and Title:  
Phone:  
Email:  
Mailing Address:

Project Manager:

Name and Title:  
Phone:  
Email:  
Mailing Address:

## EXHIBIT F – FEDERAL TERMS AND CONDITIONS

### 1. Domestic Preferences for Procurement with Federal Funds.

(a) As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) **“Produced in the United States”** means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) **“Manufactured products”** means items and construction materials composed in whole or in part of non-ferrous metals such as:

- aluminum;
- plastics and polymer-based products such as polyvinyl chloride pipe;
- aggregates such as concrete;
- glass, including optical fiber; **and**
- lumber.

### 2. Federal Debarment and Suspension.

Contractor shall ensure that none of its subcontractors are listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

### 3. Byrd Anti-Lobbying Amendment.

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.



**4. Compliance with the Solid Waste Disposal Act.**

Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**5. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.**

Contractor shall not use any equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**6. Compliance with the Clean Air Act and Federal Water Pollution Control Act.**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**EXHIBIT G – CONTRACTOR’S ORGANIZATIONAL BUSINESS CONTINUITY PLAN [NOT APPLICABLE]**