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MASTER SOFTWARE AS A SERVICE AGREEMENT

Agreement Number: 0486

This Master Software as a Service Agreement (“Agreement”) is between the State of Oregon (the “State”), by and through the Secretary of State of the State of Oregon (“the Secretary” or “SOS”), acting under a delegation of procurement authority from the Oregon Department of Administrative Services, State Procurement Office (“DAS SPO”), and on behalf of contracting agencies of the State of Oregon, local contracting agencies, and members of the Oregon Cooperative Purchasing Program, and _Chaves Consulting, Inc., an Oregon corporation (“Contractor”). This Agreement is effective on the date that it has been fully executed by the parties and approved as required by law (“Effective Date”).

The parties agree as follows:

1. Purpose. This Agreement:

- (i) Identifies the process through which Contractor and State and local contracting agencies and members of the Oregon Cooperative Purchasing Program will establish subsequent contracts for the provision of hosted electronic records management system services and related services under this Agreement;
- (ii) Sets forth the general terms and conditions that will apply to contracts pursuant to which Contractor will provide services; and
- (iii) Is not, by itself, a binding contract for the provision of services by Contractor and does not guarantee that any contracts will be executed.

2. Agreement Documents. This Agreement consists of this document and the following Exhibits, each of which is attached to and incorporated into this Agreement:

- (i) Exhibit A – Terms and Conditions
- (ii) Exhibit B – Schedule of Services and Compensation
- (iii) Exhibit C – Insurance
- (iv) Exhibit D – Subscription Services Contract
- (iv) Exhibit E – Non-Subscription Services Contract
- (v) Exhibit F – VCAF Report
- (vii) Exhibit G – Contractor Data and Tax Certification
- (vii) Exhibit H – Certification Statement for Independent Contractor

- (vii) Exhibit I – Request for Proposal, RFP #102-1752-10
- (viii) Exhibit J – Contractor’s Proposal

Any conflict among the provisions of the Agreement shall be resolved according to the following descending order of precedence: (a) the terms and conditions of this Agreement, less its Exhibits; (b) Exhibit I; (c) Exhibit A; (c) Exhibit B; (d) the Contract; (e) Exhibits C, F, G, H, and J.

3. Application of Provisions. The provisions of Exhibits A, B, C, G, and H of the Agreement apply to and are incorporated into each Contract for services executed between Contractor and an Authorized Purchaser as provided in Section 4. "Authorized Purchaser" means a contracting agency, including a local contracting agency, as those terms are defined in ORS 279A.010, or any member of ORCPP that enters into a Contract with Contractor under the terms and conditions of the Master Agreement. "Contract" means the executed agreement between Authorized Purchaser and Contractor entered into pursuant to the terms and conditions of the Agreement, including its exhibits, and substantially in either of the forms attached to the Agreement as Exhibit D or Exhibit E. "ORCPP" means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the state of Oregon as authorized to purchase the goods and services available under certain price agreements entered into by the State.

4. Contracts.

a. An Authorized Purchaser may enter into a binding and enforceable contract for Contractor’s services by executing a contract substantially in the form attached hereto as Exhibit D or Exhibit E, based upon the type of service required. Each Contract shall create a separate contract between Agency and Contractor. Each Contract so executed shall be substantially in the form attached as Exhibit D or Exhibit E.

b. Each Contract is enforceable in accordance with its terms and shall be independent of all other such Contracts. Each Contract shall specify the services that Contractor will provide and shall make the terms and conditions of Exhibit A applicable to the provision of such services. Contractor shall not accept any Contract that does not comply with these requirements.

5. Services. The services that Contractor agrees to make available under Contracts are listed in Exhibit B and are described as Subscription Services and Non-subscription Services (collectively, the “Services”). Contractor agrees to perform the Services as more specifically described under each Contract.

6. Compensation. Contractor shall be compensated for completing Services based on the rates set forth in Exhibit B. The assessment of VCAF is in addition to, and not a part of, the prices for Services set forth in the Contract.

7. Administrative Fees and Volume Sales Reports.

a. Definitions. The following definitions apply to this section:

(i) “VCAF Report” means the quarterly report substantially in the form attached hereto as Exhibit F.

(ii) “Vendor Collected Administrative Fee” or “VCAF” means a charge that is assessed to ordering entities that purchase from statewide contracts or price agreements. The fee is collected by the Contractor. The charge is set by the State as a percentage of reported sales that are made to authorized purchasers under the resulting contracts and is collected and rebated quarterly to the State by the Contractor. The VCAF fee under this Agreement is 2 % of each sale.

b. Administrative Fees/Payment. Within (30) calendar/business days after the end of each quarter during the term of this Agreement, Contractor shall pay to the State of Oregon, Secretary of State VCAF in an amount equal to two Percent (2 %) of Contractor’s total sales made to Authorized Purchasers. CONTRACTORS MAY NOT REFLECT THE VCAF FEE AS A SEPARATE LINE ITEM CHARGE TO AUTHORIZED PURCHASERS. CONTRACTOR’S RATES SHALL REFLECT ALL CHARGES TO AUTHORIZED PURCHASERS. For the purposes of this Agreement, quarters end March 31, June 30, September 30, and December 31. The State will invoice Contractor for the VCAF on a State generated invoice from the volume sales report generated by the Contractor. Contractor is responsible for timely reporting and payment, regardless of the entity that actually reports or makes VCAF payment to the State. No VCAF will be charged during the pilot period.

c. Volume Sales Reports. Contractor shall submit a Volume Sales Report, due by the 15th day following the end of each calendar quarter during the term of the Agreement, which contains: (i) complete and accurate details of the net receipts for the relevant quarterly period; (ii) Contractor’s corresponding calculation of the VCAF due to the State for that period; and (iii) such other information as the State may reasonably request. Contractor shall send a Volume Sales Report each quarter, whether or not there are reportable sales or VCAF due to the State.

d. Volume Sales Report Information. Contractor shall provide the following information on the Volume Sales Report:

- Agreement item number
- Authorized Purchaser
- Contract number
- Date ordered
- Quantity of each item ordered with Contractor’s item #'s and description
- Unit price and extended total
- Manufacturer or provider of each product or service ordered
- Total dollar amount for ending quarter

e. Volume Sales Report Format. Contractor shall provide Volume Sales Reports in a format approved by the State. Reports CD or by e-mail are preferred; however, hard copy reports are acceptable. Excel or Lotus spreadsheet formats are preferred. All other report formats must be approved by the State's Agreement administrator prior to submission of the first report.

f. Report Receipt/Acceptance. The State's receipt or acceptance of any of the reports furnished pursuant to this Agreement, or any sums paid hereunder, shall not preclude the State from challenging the validity thereof at any time. THE STATE RESERVES THE RIGHT TO TERMINATE THIS AGREEMENT IF VOLUME SALES REPORTS ARE NOT RECEIVED AS SCHEDULED.

g. Payment of VCAF. Upon receipt of the invoice from the State, as directed by the Agreement administrator, Contractor shall remit payment in the form of a check to the State for the amount indicated on the invoice. Contractor shall contact the Contract Administrator if no invoice is received within thirty (30) days after sending the Volume Sales Report to the State. Failure to submit Volume Sales Report does not release Contractor from requirement to timely remit the required VCAF.

h. Interest. Any payments Contractor makes or causes to be made after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. The State's right to interest on late payments shall not preclude the State from exercising any of its other rights or remedies pursuant to this Agreement or otherwise with regards to Contractor's failure to make timely remittances.

i. Audit. The State, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's records and other pertinent data, to determine and verify the figures reported in any Volume Sales Report furnished by Contractor. In the event that any such audit reveals underpayment of the VCAF, Contractor shall forthwith pay the amount of deficiency, together with interest thereon at the rate provided in this Section. At the State's request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by the State.

8. Term of Agreement; Amendments.

a. The initial term of this Agreement shall be thru the pilot project or December 31, 2013, whichever occurs first. Following the initial term and upon agreement of the parties, this Agreement may be assigned to DAS SPO and extended for a term of two (2) years, after which the Agreement may be extended annually for additional terms, provided, however, that the maximum duration of this Agreement, including all additional terms, shall be ten (10) years.

It is anticipated that the State will secure a minimum of 2,000 users for the pilot phase of this Agreement. In the event the State fails to achieve a minimum base of 2,000 Users by December 31, 2010 the parties may mutually agree to terminate the Agreement or extend the period of time to achieve 2,000 users. In the event the user base of 2,000 Users drops below 2,000 Users the parties shall immediately review the circumstances and mutually determine a new per User price.

At least thirty (30) calendar days before the expiration of a term, the State shall notify Contractor in writing of its intent to extend this Agreement. If both parties elect to extend this Agreement, the terms and conditions set forth in this Agreement shall remain the same during any additional term.

b. The State reserves the right in its sole discretion to extend this Agreement for not more than one calendar month beyond any term or Extension Term. The State shall notify Contractor in writing of the one-month extension at least 30 calendar days before the current term or the Extension Term expires. Contractor may not increase pricing during any one-month extension obtained pursuant to this section. The State may not obtain more than one such extension.

c. No Contracts shall be executed after the termination or expiration of the Agreement. Upon termination or expiration of the Agreement, at the request of any Authorized Purchaser, Contractor shall continue to provide the Products and Services and meet its obligations under any applicable Contract issued prior to expiration or termination of the Agreement unless such Contract is otherwise terminated pursuant to the terms and conditions of the Contract. If Contractor provides any Authorized Purchaser with Services under an existing Contract during a period following the termination or expiration of the Agreement, the terms and conditions and pricing of such Contract shall remain in effect as well as Contractor's reporting requirements.

d. The parties have determined that during the term of the Agreement or a Contract, the parties may need to modify selected terms, conditions, prices and types of products and services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

- (i) Amendments required as a result of necessary changes in the State's business process;
- (ii) Amendments to change the licensing structure;
- (iii) Amendments to change the level of technical support or hosting services offered under the Agreement or purchased by Authorized Purchaser;
- (iv) Amendments required as a result of innovations in technology, hardware, and software that are within the overall scope of Services described in the Agreement and that would benefit the State and Authorized Purchasers;

- (v) Amendments required as a result of changes in user applications that require additional upgrades which are not required by the software initially provided under the Agreement;
- (vi) Amendments to add, delete, or otherwise modify products or Services, or both, within the scope of the RFP and the Agreement;
- (vii) Amendments to extend the term of the Agreement;
- (viii) Amendments to change pricing;
- (ix) Amendments to change the Vendor Collected Administrative Fee (VCAF);
- (x) Amendments required as a result of changes in applicable law; or
- (xi) Amendments to change the contract administration of the Agreement or Contracts.

9. Termination.

- a.** The parties may terminate this Agreement at any time by the mutual written consent of both parties.
- b.** The State may also terminate this Agreement immediately upon notice to Contractor, or at such later date as it may establish in such notice, if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the purchase of the services offered by Contractor under this Agreement is prohibited or if the State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to administer this Agreement.
- c.** Upon receipt of written notice of termination, Contractor shall stop performance under this Agreement as directed by the State.

10. Provision of Services.

- a.** This is not an exclusive agreement and the State reserves the right to engage other contractors to provide the same or similar services.
- b.** Contractor shall perform, and Authorized Purchaser will pay for, Services only when performed under a Contract. An individual Contract will specify the services for that Contract.
- c.** Contractor is responsible for completing all Services as defined in the Contract to the satisfaction of Authorized Purchaser.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

CONTRACTOR

Authorized Signature: 

Title: PRESIDENT Date: 12/6/2010

Telephone number: 541 523-1029 Facsimile number: 541 523-1031

SECRETARY OF STATE

Authorized Signature: 

Title: STATE ARCHIVIST Date: 12/8/10

Telephone Number: 503-986-2241 Facsimile Number: 503-378-4991

APPROVED AS TO LEGAL SUFFICIENCY

BY EMAIL DATED: 11/22/2010

EXHIBIT A

CONTRACT TERMS AND CONDITIONS

1. Application of Provisions. The provisions of this Exhibit A, as well as Exhibits B, C, G, and H of the Agreement apply to the Agreement and also apply to and are incorporated into each Contract executed between Contractor and Authorized Purchaser. When applying the applicable provisions to the Agreement, where appropriate for the context, the references to “Contract” shall mean the Agreement.

2. Definitions. The following definitions apply to the Contract:

"Authorized Purchaser" means a contracting agency, including a local contracting agency, as those terms are defined in ORS 279A.010, or any member of ORCPP that enters into a Contract.

“Authorized Purchaser Data” means all data created by or in any way originating with Authorized Purchaser, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with Authorized Purchaser, whether such data or output is stored on Authorized Purchaser’s hardware, Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by Authorized Purchaser or by Contractor.

“Authorized Purchaser Intellectual Property” means any intellectual property that is owned by Authorized Purchaser. Authorized Purchaser Intellectual Property includes any derivative works and compilations of any Authorized Purchaser Intellectual Property.

“Authorized Representative” means a person representing a party to the Contract who is authorized to make commitments and decisions on behalf of the party regarding the performance of the Contract. Each party’s Authorized Representative is the person so identified in the Contract.

“Contract” means the executed agreement between Authorized Purchaser and Contractor entered into pursuant to the terms and conditions of the Agreement, incorporating by reference Exhibits A, B, C, G, and H of the Agreement and substantially in either of the forms attached to the Agreement as Exhibit D or Exhibit E.

“Contractor Intellectual Property” means any intellectual property that is owned by Contractor and contained in or necessary for the use, or optimal use, of the Deliverables. Contractor Intellectual Property includes Documentation, Work Product, and derivative works and compilations of any Contractor Intellectual Property. Contractor Intellectual Property does not include COTS Software.

“COTS Software” means commercial off-the-shelf software that Contractor delivers to Agency pursuant to the provision of Services.

“Deliverables” means the Services, including Work Product, and all Software or other products that Contractor is required to deliver to Authorized Purchaser under the Contract.

“Desktop Specification” means Contractor’s recommended minimum technical specifications required to access and utilize the SaaS Software specified in the Contract and in accordance with the Contract’s service levels.

“Documentation” means all documents, including documents that are Deliverables described in the Contract and includes, but is not limited to, 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 products and Services that are to be delivered by Contractor under the Contract.

“Non-subscription Services” means the services provided to Authorized Purchaser by Contractor under the Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to Authorized Purchaser by Contractor under this Agreement, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other services it provides.

“ORCPP” means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the state of Oregon as authorized to purchase the goods and services available under certain price agreements entered into by the State.

“SaaS Application” and “SaaS Software” mean the Software as Service computer software listed in a Subscription Services Contract to which Contractor has granted Authorized Purchaser access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes or patches related to the software that Contractor develops or deploys during the term of the Agreement, together with all Documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes or patches.

“Service Levels” means the performance specifications for Services performed by Contractor.

“Services” means Non-subscription Services and Subscription Services.

“Software” means the software, including COTS Software and SaaS Software, identified in Exhibit B, and all related Documentation, that the Contractor will deliver to Authorized Purchaser.

“SOS” means the Secretary of State of the State of Oregon.

“State” means the State of Oregon, acting by and through the Department of Administrative Services, State Procurement Office (“DAS SPO”) or the Secretary of State of the State of Oregon (“Secretary” or “SOS”).

“Subscription Services” means Authorized Purchaser’s access to and use, and Contractor’s provision, of the SaaS Software and other services in accordance with the terms and conditions set forth in the Contract.

“Third Party Intellectual Property” or “Third Party Products” means any intellectual property owned by parties other than Authorized Purchaser or Contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS Software owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

“User” means Authorized Purchaser’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by Authorized Purchaser to access and use the SaaS Software and any part or portion of the Subscription Services or Non-subscription Services in the performance of their duties for Authorized Purchaser.

“User Information” means all information directly or indirectly obtained from Users accessing the SaaS Software where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.

“Work Product” means 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 registrable under copyright or similar statutes or subject to analogous protection) 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 the Master Agreement. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Authorized Purchaser Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

3. Services.

3.1 Subscription and Non-Subscription Services.

3.1.1 Contractor shall provide and Authorized Purchaser may acquire the Subscription and Non-subscription Services as described in this Agreement. As part of the Services, Contractor shall manage the recordation of User Information. Such User Information shall be treated as Authorized Purchaser’s Confidential Information.

3.1.2 Authorized Purchaser and Contractor shall execute a Contract, in substantially the same form as the sample Contracts attached to this Agreement as Exhibit D or Exhibit E, for Authorized Purchaser’s access to and use of the Software, together with any

applicable Service Levels, maintenance, support and any other services. The terms and conditions of each Contract shall be independent of, and shall have no impact upon, the provisions of any other Contract.

Each Contract is subject to the Agreement and must include the following mandatory language:

THIS CONTRACT IS ENTERED INTO PURSUANT TO AGREEMENT # 0486 AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE AGREEMENT APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

3.2 Delivery. All goods and Software to be supplied by Contractor will be new unless expressly authorized by Authorized Purchaser. Contractor shall deliver goods and Software to Authorized Purchaser F.O.B. to the destination specified in the Contract in accordance with the Delivery Schedule. During the period that goods and Software are in transit, and up until the time that the goods and Software are tendered so as to enable Authorized Purchaser to take delivery, Contractor and its insurers, if any, relieve the Authorized Purchaser and the State of Oregon of the responsibility for all risk of loss of, or damage. Thereafter, all risk of loss of, or damage shall be borne by the Authorized Purchaser.

3.3 Warranties. If applicable, Contractor shall have all third party warranties covering the goods and Software transferred to the Authorized Purchaser at time of delivery at no additional charge. Contractor shall also furnish to the Authorized Purchaser the details of the third party publisher warranties.

3.4 Responsibilities of Authorized Purchaser. If the Contract requires Authorized Purchaser to provide any software, goods or services, and Authorized Purchaser fails to provide the requisite quality or quantity of such software, goods or services, or fails to provide such software, goods or services in a timely manner, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by Authorized Purchaser's failure.

3.5 Acceptance of Services.

3.5.1 Contractor shall commence the Services and provide Deliverables as set forth in the Contract. Unless otherwise provided in the Contract, within ten business days after commencement of the Services, Authorized Purchaser shall perform any acceptance tests to determine whether the Services meet the acceptance criteria designated by Authorized Purchaser. If the acceptance tests establish that the Services conform to the acceptance criteria, then Authorized Purchaser shall issue written notice of acceptance to Contractor, and "final acceptance" shall be deemed to have occurred.

3.5.2 If the Authorized Purchaser determines that the Services do not meet the acceptance criteria, Authorized Purchaser shall notify Contractor in writing of Authorized

Purchaser's rejection of the Services and describe in reasonable detail the basis for rejection. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 calendar day period, modify or improve the Services at Contractor's sole expense to ensure that the Services meet the acceptance criteria, and notify the Authorized Purchaser in writing that it has completed such modifications or improvements and re-tender the Services to Authorized Purchaser. Authorized Purchaser shall thereafter review the modified or improved Services within 15 calendar days of receipt. Failure of the Services to meet the acceptance criteria after the second set of acceptance tests shall constitute a default by Contractor. Upon such default, Authorized Purchaser may either allow Contractor to continue to correct the Services or declare a material breach of the Contract by Contractor.

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

3.5.4. No provision of this Section 3.5 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

3.6 Warranty Period.

3.6.1 For a period of one year after final acceptance, Contractor shall, at no additional charge to Authorized Purchaser, furnish such materials and services as shall be necessary to correct any defects in the Services and maintain the Services in good working order. Notwithstanding the expiration of the warranty period, Contractor shall be obligated to cure defects discovered during the warranty period.

4. **Contractor's Personnel.**

4.1 Authorized Representative; Program Manager. Contractor shall designate an Authorized Representative and Program Manager for the Services. The Authorized Representative and Program Manager shall be familiar with Authorized Purchaser's business operations and objectives as necessary for the provision of the Services and shall be responsible for Contractor's performance of the Services in accordance with the Agreement. The Program Manager shall participate with Authorized Purchaser in periodic review sessions and shall provide Service reports at Authorized Purchaser's request.

4.2 Subcontractors. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by Authorized Purchaser. Contractor represents that any assigned employees and authorized subcontractors shall perform the Services in accordance with the Agreement.

5. Compensation.

5.1 Rates. Authorized Purchaser shall pay Contractor according to the rates set forth on Exhibit B for the Services and Software provided under the Contract. The assessment of VCAF, as provided in the Agreement, is in addition to, and not a part of, the prices for Services set forth in the Contract.

5.2 Expenses. Contractor shall not be reimbursed for any expenses incurred by Contractor in the performance of the Services.

5.3 Invoices. Unless otherwise agreed, Authorized Purchaser shall not pay Contractor more than once each month upon Contractor's submission of detailed invoices that set forth the Services accepted by Authorized Purchaser. Such invoices shall comply with the requirements of this Section 5 and shall describe the Deliverables completed and accepted by Authorized Purchaser for which Contractor seeks compensation. Contractor shall request payment only for Deliverables accepted by Authorized Purchaser. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall submit invoices to Authorized Purchaser's Authorized Representative. Authorized Purchaser will have the right to review each such invoice for compliance with the requirements of this Section 5 and any other relevant provisions of the Agreement. All payments to Contractor are subject to ORS 293.462.

5.4 Limit on Payments. No payment will be made for any Services provided before the effective date or after termination of the Agreement or under a specific Contract. Authorized Purchaser's payments are conditioned upon Authorized Purchaser receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations. Nothing in the Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

5.5 Price Renegotiation. 60 calendar days prior to the expiration of the Initial Term, and then upon each renewal thereafter, either Contractor or the State may request price renegotiation. This price renegotiation will be conducted in good faith between the parties and may result in a price change being offered to the State for continuing Services and Product offerings. If Contractor and the State reach an agreement during the 60 calendar day re-negotiation period, Contractor will adjust its pricing accordingly for the applicable Extension Term and will continue to provide the Services. If the parties are unable to reach an agreement, the Agreement will terminate subject to an Authorized Purchaser's right to transition the Services.

5.6 No Liability for Non-State Authorized Purchasers. The State bears no liability for Services provided by Contractor to parties who are not Authorized Purchasers or in Contracts entered into between Authorized Purchasers that are not State agencies, and the

State expressly disclaims any such liability. With regard to Authorized Purchasers that are not State agencies, Contractor shall look solely to the respective party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Services and the resulting contractual relationship, if any, with each such contracting party.

6. Right to Use; Ownership and License in Product or Services.

6.1 Use. Contractor grants Authorized Purchaser an unlimited, transferable, non-exclusive right to access and to use the Subscription Services listed on any SaaS Subscription Schedules and the Non-Subscription Services listed on the Contract.

6.2 License. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Authorized Purchaser pursuant to the Services performed. Contractor grants Authorized Purchaser a license to all other Contractor Intellectual Property. Unless otherwise stated in the Contract, Contractor grants Authorized Purchaser a non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Contractor Intellectual Property, and to authorize others to do the same on Authorized Purchaser's behalf.

6.3 Work Product. Contractor owns all Work Product. Contractor grants Authorized Purchaser a non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Work Product, and to authorize others to do the same on Authorized Purchaser's behalf.

6.4 Third Party Intellectual Property. Contractor shall secure on Authorized Purchaser's behalf, in the name of Authorized Purchaser and subject to Authorized Purchaser's approval, a license to Third Party Intellectual Property sufficient to provide the Services and fulfill the business objectives identified in the Agreement or a Contract, and to authorize others to do the same on Authorized Purchaser's behalf

6.5 Authorized Purchaser Data and Intellectual Property. Authorized Purchaser owns all Authorized Purchaser Data and Intellectual Property provided to Contractor pursuant to the Contract. Authorized Purchaser grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Authorized Purchaser Intellectual Property and Authorized Purchaser data and background information only to fulfill the purposes of the Contract. Authorized Purchaser's license to Contractor is limited to the term and confidentiality obligations of the Contract.

6.6 No Rights. Except as expressly set forth in the Contract or Agreement, nothing shall 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 Authorized Purchaser. Except as expressly set forth in the Contract or Agreement, shall be construed as granting to or conferring upon Authorized Purchaser any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

6.7 Competing Services. Subject to the provisions of this Section 6 and Contractor's obligations with respect to Confidential Information, nothing in the Contract or Agreement precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in the 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 hereunder, irrespective of their similarity to the Deliverables. The parties, including the State, Contractor and Authorized Purchasers, shall be free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under the Contract free of any use restriction or payment obligation to another party.

7. Confidentiality and Non-Disclosure.

7.1 Confidential Information. Contractor acknowledges that it and its employees or subcontractors may, in the course of performing their responsibilities under the Contract, be exposed to or acquire information that is confidential to Authorized Purchaser or Authorized Purchaser's clients. Any and all information of any form obtained by Contractor or its employees or subcontractors in the performance of the Contract is confidential information of Authorized Purchaser ("Confidential Information"). Contractor shall treat any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor with respect to confidentiality in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Authorized Purchaser to others without restrictions similar to those imposed by the Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under the Contract; (d) is obtained from a source other than Authorized Purchaser without the obligation of confidentiality, (e) is disclosed with the written consent of Authorized Purchaser, or; (f) is independently developed by employees or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

7.2 Non-Disclosure. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to Authorized Purchaser hereunder, and to advise each of its employees and subcontractors of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Authorized Purchaser in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise the State and Authorized Purchaser 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 the Contract and Contractor will at its expense cooperate with the State and Authorized Purchaser in seeking injunctive or other equitable relief in the name of Authorized Purchaser or Contractor against any such person. Except as directed by Authorized Purchaser, Contractor will not at any time during or after the term of the Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with the Contract, and that upon termination of the Contract or at Authorized Purchaser's request, Contractor will turn over to Authorized Purchaser all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Contractor shall ensure the compliance of its employees and subcontractors with this Section 7.

7.3 Identity Theft. In the performance of the Contract, 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), including Social Security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have in place, 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 Identity Theft Protection Act, ORS 646A.600-646A.628.

7.3.1 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 the Contract. 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 the State, the Authorized Purchaser, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

7.3.2 Contractor shall report to the State and Authorized Purchaser, as promptly as possible, 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 the Contract.

7.4 Security Policies; NDA. Contractor at all times shall comply with Authorized Purchaser's security policies. Contractor shall upon Authorized Purchaser's request provide a written nondisclosure agreement and obtain such from Contractor's employees or subcontractors performing Services under the Contract.

7.5 Injunctive Relief. Contractor acknowledges that breach of this Section 7, including disclosure of any Confidential Information, will give rise to irreparable injury

to Authorized Purchaser that is inadequately compensable in damages. Accordingly, Authorized Purchaser 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 Authorized Purchaser and are reasonable in scope and content.

7.6 Publicity. Contractor agrees that news releases and other publicity relating to the subject of the Contract or Agreement will be made only with the prior written consent of the State and Authorized Purchaser.

7.7 Transition Assistance. Upon expiration or termination of all or part of the Subscription Services or Non-subscription Services being provided under the Contract and upon Authorized Purchaser's request and subject to continued payment for so long as Services are maintained, Contractor shall provide the following termination assistance: Contractor shall continue to provide the Subscription Services and Non-subscription Services that were provided by Contractor prior to the expiration or termination and any new services requested by Authorized Purchaser that may be required to facilitate the transfer of the affected Subscription Services and Non-subscription Services to Authorized Purchaser, a Third-Party service provider or other Authorized Purchaser designee, as applicable, including providing to Authorized Purchaser or Third-Party personnel training in the performance of the affected Subscription Services and Non-subscription Services. At no additional cost, Contractor shall provide to Authorized Purchaser and any designated Third-Party service provider: (i) in writing, applicable requirements, standards, policies, operating procedures and other documentation relating to the affected execution environment of the Subscription Services and Non-subscription Services; and (ii) necessary access to the systems and sites from which the affected Subscription Services and Non-subscription Services were provided, subject to Authorized Purchaser's right to review same. Contractor shall provide the termination assistance outlined in this section for a period of up to twelve (12) months, unless otherwise specified in the Contract. Immediately upon expiration or termination of the Agreement or the Contract, Contractor shall provide Authorized Purchaser with a final export of Authorized Purchaser Data in a format specified by Authorized Purchaser and shall certify the destruction of all Authorized Purchaser Data within the possession of Contractor that is solely related to the expired or terminated Subscription Services or Non-subscription Services.

8. Contractor's Representations and Warranties.

8.1 General Representations and Warranties. In addition to all other Contractor representations and warranties in the Contract Contractor also represents and warrants to Authorized Purchaser that:

- a) Contractor has the power and authority to enter into and perform the Contract;

- b) The Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c) Contractor will, at all times during the term of the Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services;
- d) 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 shall not violate any such law, ordinance, regulation or order;
- e) Contractor's performance under the Contract creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under the Contract; and
- f) The Contractor Data and Tax Certification in the form attached to the Agreement as Exhibit G and the Certification Statement For Independent Contractor in the form attached to the Agreement as Exhibit H are true and accurate as of the Effective Date, and Contractor will notify Authorized Purchaser in writing if any such data or certifications change during the term of the Agreement such that the attached Exhibits G or H, if applicable, are no longer true and accurate.

8.2 Contractor's Performance Warranties. Contractor represents and warrants to Authorized Purchaser that:

- a) 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 the Contract in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Authorized Purchaser pursuant to the Contract;
- b) Through the expiration of the warranty period, all Services delivered by Contractor to Authorized Purchaser shall conform to the acceptance criteria set forth in the Contract and any Documentation provided by Contractor and shall be free from error or defect that materially impairs their use, and shall be free from defects in materials, workmanship and design;
- c) Except as otherwise permitted or provided in the Contract, all Services supplied by Contractor to Authorized Purchaser shall be transferred to Authorized Purchaser 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;

d) When used as authorized by the Contract, no Service delivered by Contractor to Authorized Purchaser infringes, nor will Authorized Purchaser's use, duplication, or transfer of such Services infringe, any copyright, patent, trade secret, or other proprietary right of any third party;

e) Except as otherwise set forth in the Contract, any subcontractors performing work for Contractor have assigned all of their rights in the Services to Contractor or Authorized Purchaser and no third party has any right, title or interest in any Services supplied to Authorized Purchaser under the Contract;

f) 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 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; and

g) At the time of delivery and installation of the Software provided through the Contract, the Software shall be free of what are commonly defined as viruses, worms, spyware, and other malicious defects 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 the Contract.

9. Indemnities.

9.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Authorized Purchaser and their agencies, subdivisions, officers, directors, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses for personal injury, including death, damage to real property and damage to tangible 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 the Contract; provided that Contractor shall have no obligation to indemnify the State of Oregon or Authorized Purchaser from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of the State of Oregon or Authorized Purchaser, and their officers, employees or agents.

9.2 IP Indemnity. In addition to and without limiting the generality of Section 9.1, Contractor expressly agrees to, indemnify, defend and hold the State of Oregon and Authorized Purchaser and their agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages,

liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Services or use thereof infringe 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 Software or Services infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Authorized Purchaser's prior written consent, which Authorized Purchaser shall 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 Authorized Purchaser 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 Software continues to function in conformance with the requirements set forth in the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of the Contract, and Authorized Purchaser may pursue any rights and remedies available to it under the Contract, including termination. Contractor shall not be liable under this Article 9.2 for any claim for infringement based solely on the following:

- a) Authorized Purchaser's modification of the Software or Services other than as set forth in the Contract or without the written permission of Contractor;
- b) Use of the Software or Services in a manner other than as contemplated by the Contract or as authorized in writing by Contractor; or
- c) Use of the Software or Services in combination, operation, or use of with other products in a manner that does not comply with their specifications, not specified by Contractor or of which Contractor has not approved in writing.

9.3 Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 9.1 and 9.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 9.1 or Section 9.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, 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 shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

9.4 Insurance. Contractor shall provide insurance as required by Exhibit C.

10. Events of Default.

10.1 Default by Contractor. Contractor shall be in default under the Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- b) 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 30 business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice; or
- c) Contractor commits any material breach or default of any covenant, warranty, obligation or certification under the Contract, 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 the Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within 30 business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice.

10.2 Default by Authorized Purchaser. Authorized Purchaser shall be in default under the Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of the Contract and Authorized Purchaser fails to cure such failure within 30 business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any material breach or default of any covenant, warranty, or obligation under the Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Authorized Purchaser fails to cure such failure within 30 business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

11. Remedies for Default.

11.1 Authorized Purchaser's Remedies. In the event Contractor is in default under Section 10.1, Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under the Contract and at law or in equity, which include, without limitation:

- a) termination of the Contract under Section 12.2;
- b) withholding all monies due for Services that Contractor is obligated but has failed to perform within 30 days after Authorized Purchaser has notified Contractor of the nature of Contractor's default;
- c) credits or other remedies for failure to meet Service Levels;
- d) with respect to Services for which Authorized Purchaser has paid before acceptance, a return of all moneys previously paid for such Services;
- e) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- f) exercise of its right of setoff.

11.2 Remedies Cumulative. These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Section 10.1, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 12.1.

11.3 Contractor's Remedies. In the event the State terminates the Agreement or Authorized Purchaser terminates the Contract, as set forth in Section 12.1, or in the event Authorized Purchaser is in default under Section 10.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 12.3., Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the percentage of Services completed on each Deliverable up to the not to exceed amount for the Deliverable set forth in the Contract, authorized expenses incurred, less previous amounts paid and any claims which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 11.3, Contractor shall pay any excess to Authorized Purchaser upon written demand.

12. Termination; Suspension.

12.1 Authorized Purchaser's Right to Terminate. Authorized Purchaser may, at its sole discretion, terminate the Contract, as follows:

- a) Authorized Purchaser may terminate the Contract for its convenience upon 30 days' prior written notice to Contractor.
- b) Authorized Purchaser may terminate the Contract if the Authorized Purchaser fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's services.

c) Authorized Purchaser may terminate the Contract if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under the Contract is prohibited or if Authorized Purchaser is prohibited from paying for such Services from the planned funding source.

12.2 Authorized Purchaser's Right to Terminate for Cause. In addition to any other rights and remedies Authorized Purchaser may have under the Contract, Authorized Purchaser may terminate the Contract, in whole or in part, immediately upon Contractor's default under Section 10.1.

12.3 Contractor's Right to Terminate for Cause. Contractor may terminate the Contract upon Authorized Purchaser's default under Section 10.2.

12.4 Return of Property. Upon termination of the Contract for any reason whatsoever, Contractor shall immediately deliver to Authorized Purchaser all of Authorized Purchaser's property (including without limitation Authorized Purchaser's Confidential Information or any Services for which Authorized Purchaser has made payment 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 Authorized Purchaser property is expressed or embodied at that time.

12.5 Authorized Purchaser's Right to Suspend the Services.

12.5.1 Authorized Purchaser may suspend portions or all of the Services due to the following causes:

- a) Contractor's default under section 10.1;
- b) Any reason considered to be in the public interest; or
- c) For non-appropriation as set forth in section 12.1 and 16.6.

12.5.2 Authorized Purchaser shall notify Contractor in writing of the effective date and time of the suspension and shall notify Contractor in writing to resume Services.

12.5.3 During suspension Contractor is responsible as follows:

- a) If the suspension occurs due to the reason set forth in Section 12.5.1(a), Contractor shall continue to provide any unexpired warranty coverage and maintain prepaid Service Levels. No single instance of suspension of performance for Contractor's default under 12.5.1(a) may exceed 180 days.

b) If the suspension occurs due to the reasons set forth in Sections 12.5.1(b) or (c), Contractor shall provide warranty coverage for a period of 90 days following the effective date of suspension for any Deliverables accepted prior to the effective date of suspension. Notwithstanding the foregoing, Contractor shall not be obligated to provide warranty period maintenance and support except to the extent such warranty period maintenance and support has been paid in advance. No single instance of suspension of performance under 12.5.1(b) or 12.5.1(c) may extend beyond 30 days after the end of the biennium during which the suspension occurred.

c) If the Services are recommenced after the suspension Contractor shall complete the Services in every respect as though its prosecution had been continuous and without suspension. Due dates for Services shall be extended by the amount of the period of suspension and a reasonable period for Contractor's remobilization not to exceed 90 calendar days.

13. Independent Contractor; Taxes and Withholding.

13.1 Independent Contractor. Contractor shall perform all Services as an independent contractor. Although Authorized Purchaser reserves the right to evaluate the quality of the completed performance, Authorized Purchaser 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.

13.2 Declaration and Certification. Contractor by execution of the Contract 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 the Contract, and (ii) in the event that Contractor or its personnel are performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel provide services prohibit Contractor or its personnel from providing the Services under the Contract. Contractor also declares and certifies by execution of the Contract that it is not an "officer," "employee," or "agent" of Authorized Purchaser, as those terms are used in ORS 30.265.

13.3 Responsible For Taxes. Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under the Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser 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 the Contract, except as a self-employed individual.

14. Compliance Applicable Law.

Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. 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 Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

15. Dispute Resolution.

15.1 Litigation – State Agencies. Any claim, action, suit, or proceeding (collectively, "Claim") between a Authorized Purchaser that is a State agency and Contractor that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS MASTER AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 15.1. In no event shall this Section 15.1 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

15.2 Litigation – Non-State Authorized Purchasers. Any Claim between a non-State agency Authorized Purchaser and Contractor that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the state court for the county of the residence of the Authorized Purchaser; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS MASTER AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 15.2. In no event shall this Section 15.2 be construed as a waiver by the State of Oregon or any non-State Authorized Purchaser of

any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

15.3 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

16. Miscellaneous Provisions.

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

16.2 Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Services required by the Contract or assign or transfer any of its interest in the Contract without Authorized Purchaser's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of Authorized Purchaser. Authorized Purchaser's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under the Contract.

16.3 Successors and Assigns. The provisions of the Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

16.4 No Third-Party Beneficiaries. The State, Authorized Purchaser and Contractor are the only parties to the Agreement and the Contract and are the only parties entitled to enforce their terms. Nothing in the Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Contract.

16.5 Funds Available and Authorized. Contractor shall not be compensated for Services performed under the Contract by any other Authorized Purchaser or department of the State of Oregon. Authorized Purchaser believes it has sufficient funds currently available and authorized for expenditure to finance the costs of the Contract within Authorized Purchaser's biennial appropriation or limitation. Contractor understands and agrees that Authorized Purchaser's payment of amounts under the Contract is contingent on Authorized Purchaser receiving appropriations, limitations, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to continue to make payments under the Contract.

16.6 Records Maintenance; Access. Contractor shall maintain all financial records and other records relating to its performance under the Contract in accordance with generally

accepted accounting principles and in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Authorized Purchaser, the State and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of six years, or such longer period as may be required by applicable law, following termination of the Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later.

16.7 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 the Contract. Contractor shall demonstrate its legal capacity to perform the Services under the Contract in the State of Oregon before entering into the Contract.

16.8 Survival. All rights and obligations shall cease upon termination or expiration of the Contract except for the rights and obligations and declarations set forth in Articles V, VI, VII, VIII, IX, XII, XIV and XVI, and Sections 5, 6, 7, 8, 9, 11, 13.3, 15, 16.3, 16.4, 16.6, 16.8, 16.17, 16.18, and 16.20.

16.9 Time is of the Essence. Contractor agrees that time is of the essence in its performance under the Contract.

16.10 Force Majeure. Neither Authorized Purchaser nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been 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 or other natural disasters, war, riots or strikes. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

16.11 Notices. Except as otherwise expressly provided in the Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor or Authorized Purchaser at the address or number set forth in the Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 16.11. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against Authorized Purchaser, such facsimile transmission must be confirmed by telephone notice to the Authorized Purchaser Authorized Representative. Any communication or

notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative.

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

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

16.14 Amendments. The Contract may be amended, modified, or supplemented only by a written amendment signed by Authorized Purchaser and Contractor that has been approved by DOJ, if required by applicable law. Any amendment that provides for additional Services may only provide for Services directly related to the scope of Services and Products described in the Agreement, and no amendment shall be effective until all requisite signatures and approvals are obtained.

16.15 Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385 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.

16.16 Waiver. The failure of either party to enforce any provision of the Contract or the waiver of any violation or nonperformance of the Contract in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of the Contract shall bind either party unless in writing and signed by both parties and all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

16.17 Disaster Recovery; Backup. Notwithstanding the provisions of section 16.10, Contractor shall be responsible for providing disaster recovery services if Contractor experiences or suffers a disaster; Contractor shall take all necessary steps to ensure that Authorized Purchaser shall not be denied access to the Services for more than twenty four (24) hours in the event there is a disaster to Contractor data, Authorized Purchaser Data or Contractor Intellectual Property necessary to provide the Subscription Services and the Non-subscription Services. Contractor shall maintain the capability to resume provision of the Services from an alternative location and via an alternative telecommunications route in the event of a disaster that renders Contractor's data center unusable or unavailable. If Contractor fails to restore the Subscription Services and the

Non-subscription Services within twenty four (24) hours of the initial disruption to service, or Contractor declares more than two (2) disasters in any twelve (12) month period, Authorized Purchaser may declare Contractor to be in default of the Contract and Authorized Purchaser may seek alternate services, which would have otherwise been provided under the Contract, from another source. Contractor shall reimburse Authorized Purchaser for all costs reasonably incurred by Authorized Purchaser in obtaining such alternative services, with payment to be made within thirty (30) days of Authorized Purchaser's written request for such payments.

Contractor shall provide off-site storage on a weekly basis of all backup disks, data or materials of any type whatsoever produced in whole or in part in connection with or related to the performance by Contractor of its obligations under the Contract (including without limitation discs, tapes, other storage media, work papers and partial drafts of documentation code).

16.18 Integration. The Contract including the Agreement and its 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 the Contract.

16.19 No Partnership. The Contract is not intended, and shall not be construed, to create a partnership or joint venture between Authorized Purchaser and Contractor. Nothing in the Contract shall be construed to make Authorized Purchaser and Contractor partners or joint venture participants.

EXHIBIT B

SCHEDULE OF SERVICES AND COMPENSATION

Description of Service

- a.** Provide secure electronic records management application and hosting and secure transport. Service shall include use of the HP TRIM DoD5015.2 continually compliant software. (The compliant software must be hosted on Contractor's maintained redundant, load balanced, and high-availability infrastructure in an appropriately hardened and secured data center environment that meets the standards of a Tier Two Data Center). All data storage shall be managed such that corrupt data can be recovered in less than 2 hours, and backed up and transported securely to a secure offsite location for disaster recovery. Missing data can be recovered in less than 24 hours, and backed up and transported securely to a secure offsite location for disaster recovery.
- b.** Services shall meet the general requirements listed below and must address attachment size or any other known limits.

The standard Services listed below shall be included in the per user price. Contractor may provide and list additional options.

Standard Service to include:

- Use of HP TRIM ERMS licensed software
- ERMS Application configuration and administration set up
- Integration with GroupWise, Outlook and SharePoint
- Project Management
- 24X7 Helpdesk support
- User and administrative training
- User documentation
- Hosting with acceptable storage
- Direct billing to Authorized Purchaser
- Acceptable Service Levels
- Work with the Secretary of State's Business Services Division for fee distribution to the Archives Division for their services in retention schedule preparation, classification structure development and initial application use training, which is in addition to the services now provided for paper records.

Suggested Additional Services:

- Additional application integration
- Additional Project Management
- Additional hosting

- Additional user training
- Additional Help Desk Services

Hosting Solution provides:

A Tier II or higher Data Center, including, at a minimum:

- Physical, electronic and biometric security which meets the Oregon Department of Administrative Services Standards
- Acceptable availability and scalability for up to 100,000 users
- Windows application servers
- Redundancy built at all levels
- Adequate HVAC cooling to scale to statewide service
- Redundant ISP's with acceptable connectivity and speed
- Freeway and airport accessibility
- 24X7 infrastructure monitoring and support
- Located in a no flood zone
- The data center must be located in a an area that is projected to experience a less than 20% peak ground acceleration as indicated on the Oregon Department of Geology and Mineral Industries 'Earthquake Hazard Maps for Oregon

<http://www.oregongeology.com/sub/publications/gms/gms100.pdf>

Solution must also include:

- A costing model which provides economy of scale to lower subscription fees with increased number of users.

PROPOSED SaaS AND PROPOSERS ABILITY TO EXECUTE

- The SaaS proposed must be able to manage across multiple repositories.
- The SaaS proposed must be scalable to 100,000 + users.
- The SaaS proposed must be able to be integrated with Novell GroupWise and Microsoft Outlook mail systems as well as Sharepoint.
- The SaaS proposed must support and be compatible with the State's classification and scheduling system and record retention laws.
- The software component of the proposed solution, which will manage electronic records, must be HP TRIM certified against DoD5015.2 and remain certified through the life of the contract.
- The preferred server technology is Windows Application Server, Microsoft or Oracle data base and integration with Microsoft office.

c. Migration Support/Implementation Plan

Contractor shall provide a proven set of migration processes and tools to convert existing documents and email to the ERMS SaaS services. The existing Authorized Purchaser's

email services include but are not limited to GroupWise, Lotus Notes, hosted Exchange server, and POP3-based emails.

Contractor shall implement its transition plan for the first pilot agency with at least 1,000 users and 25 offices located across the State including a high level project schedule and roll-out plan. Contractor shall work with the Secretary's Archivist to bring in future agencies once the pilot is successful.

Contractor shall provide optional additional migration services as requested by Authorized Purchaser.

d. Authorized Purchaser Administrative Capability

Contractor shall include administrative access to Authorized Purchaser with the following minimum features:

- Authorized Purchaser's administrator(s) responsible for account administration (Move/Add/Change)
- Authorized Purchaser's administrator(s) can request assistance in using the ERMS tool and recovering documents if necessary
- Ad hoc per-user volume & storage usage reporting
- Authorized Purchaser's aggregate storage allocation & current consumption reporting
- Administrative abilities shall be able to be segregated by Authorized Purchaser

d. Archival and E-Discovery

Contractor shall meet the State's Archival and Retention rules (http://arcweb.sos.state.or.us/rules/OARS_100/OAR_166/166_tofc.html). Services shall include retention and e-discovery capability.

e. Record Security

In recognition of the sensitive nature of the information handled by Authorized Purchasers, Contractor shall ensure Authorized Purchaser's records are transported, stored, and accessed in a secure manner. Contractor shall abide by the following:

State's Security Plan and Standards:

http://www.oregon.gov/DAS/EISPD/ESO/SW_Plan_Standards.shtml

State Information Security Policies:

<http://www.oregon.gov/DAS/EISPD/ESO/Policies.shtml>

http://www.oregon.gov/DAS/EISPD/ESO/Policies.shtml#Policy_Set

Oregon ID Theft Act:

<http://www.oregon.gov/DAS/EISPD/ESO/IDTheft.shtml>

At Authorized Purchaser's request, segregated data storage will be provided.
[Describe measures taken to ensure records transported by and stored on Contractor's servers remains unaltered from its original form.]

Requirements include the following at a minimum:

- Transport of records between Contractor hosting site must be strongly encrypted
- All Authorized Purchaser's access to records at Contractor's site must be strongly encrypted
- Authorized Purchaser's access to records at Contractor's shall be strongly authenticated (e.g. secure token, certificate, PIN, etc.)
 - Prefer to use Authorized Purchaser's domain authentication.
- Access to records at Contractor's only from strongly authenticated users as defined in Enterprise Information Security Standard for the State of Oregon 1.1 "Authentication Standards". Authorized Purchaser's records are protected from unauthorized access from:
 - Contractor's other hosted customers and clients
 - Contractor's business partners and contractors of customers and clients
 - Contractor's administrative personnel
 - Internet users, general public
 - Unauthorized agency employees, contractors, and business partners
 - Unauthorized State of Oregon employees, contractors and business partners

f. Service Level and Remedies.

Service availability shall be a minimum of 99.99% measured on a monthly basis.
 Record retrieval delivery time shall be three minutes or less, 95%, measured on a monthly basis.

Provide 24 hours per day / 7 days per week / 365 days per year service support.

Remedies:

Measure	Performance (Monthly)	Remedy (Credit) per Month
Availability	99.99%	Monthly Fee x # of affected seats
Record Retrieval Time	95%	Monthly Fee x # of affected seats

Contractor shall provide a Statement of Compliance with the Service Level and Remedies identified above.

g. Other Requirements.

Reporting

Contractor shall at a minimum provide the following reports:

Usage reports, e.g., who (Agency) is using the ERMS system (sizes, frequencies, etc.)

Storage reports, e.g., who is using what kind of storage.

Status reports, e.g., to measure if service meets SLA.

Billing-related reports, e.g., fee per usage by Agency, departments, etc.

The frequency of reports will be determined by the Secretary and each Authorized Purchaser.

Training

Contractor shall provide at a minimum the following training and associated materials:

Issue escalation related training such as using Proposer's defect tracking system, escalation process, etc.

Billing-related training, e.g., ordering of additional services, resolve billing questions, etc

Support

Contractor shall provide a clearly defined support process that includes at a minimum the following:

1. Support triage model
2. Support request status
3. Service upgrade roadmap
4. User panel
5. Escalation process
6. Personal distribution list capability
7. Contact List
8. Disaster/business continuity capability
9. Migration planning and services, tools, training
10. Overview of Proposer's business (Length of time offering requested services, number and churn rate of clients, migration references)
11. Proposer's operational processes (ISOxxxx, ITIL, etc)
 - a. Configuration & change management
 - b. Network security administration

- c. System administration
 - d. External certification/auditing for infrastructure and ERMS DoD 5015.2 compliance
- 12. Virus protection (including process to keep current in perpetuity)
- 13. email clients and other applications supported
- 14. Browsers supported (for remote access & administrative access)
- 15. Description of datacenter(s), type classification, geographic redundancy, certifications, square footage, ownership, number servers, etc
- 16. Service Performance
 - a. SLA & nonperformance penalties
 - b. Operational Key Performance Metrics (Network/server utilization, etc)
- 17. Authorized Purchaser authentication required for access to accounts
- 18. Service termination
 - a. Clearly defined service termination process
 - b. Record protection plan
- 19. Help Desk
- 20. Information security incident response process

Pricing

Number of Users	Cost per Month	Monthly Rebate
	per User	
2,000	\$37.02	\$8.76
3,000	\$37.02	\$8.76
4,000	\$29.74	\$4.87
5,000	\$26.66	\$2.92
6,000	\$24.06	
7,000	\$21.61	
8,000	\$19.62	
9,000	\$18.81	
10,000	\$17.53	
11,000	\$16.55	
12,000	\$15.71	
13,000	\$14.68	
14,000	\$14.02	
15,000	\$13.55	
16,000	\$12.54	
17,000	\$11.96	
18,000	\$11.44	
19,000	\$10.99	
20,000	\$10.54	

EXHIBIT C

INSURANCE

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

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

ii. **PROFESSIONAL LIABILITY**

☒ **Required by State** ☐ **Not required by State**

Professional Liability. Contractor shall obtain and maintain at its own expenses for the duration of the Agreement and any Contract. Professional Liability Insurance with a combined single limit, or the equivalent, as set forth below. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under the Agreement and any Contract. Full limits can be obtained by the purchase of one primary policy or a primary and excess policy as needed to provide the full policy limits. Such policy shall include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Network Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage caused by error, omission, or negligent acts, including all prior acts without limitation, related to the professional services to be provided under the Agreement and any Contract. The Policy shall be amended to include Independent Contractors providing Professional Services on behalf of or at the direction of Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, known wrongful acts, contractual liability, privacy policy, and insured versus insured.

☒ Per occurrence limit for any single claimant:

July 1, 2010 to June 30, 2011:	\$1,700,000.
July 1, 2011 to June 30, 2012:	\$1,800,000.

July 1, 2012 to June 30, 2013:	\$1,900,000.
July 1, 2013 to June 30, 2014:	\$2,000,000.
July 1, 2014 to June 30, 2015:	\$2,100,000.

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

Per occurrence limit for any number of claimants

July 1, 2010 to June 30, 2011:	\$3,700,000.
July 1, 2011 to June 30, 2012:	\$3,900,000.
July 1, 2012 to June 30, 2013:	\$4,100,000.
July 1, 2013 to June 30, 2014:	\$4,300,000.
July 1, 2014 to June 30, 2015:	\$4,500,000.

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

iii. COMMERCIAL GENERAL LIABILITY.

☒ **Required by the State** ☐ **Not required by the State**

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

☒ Per occurrence limit for any single claimant:

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

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

Per occurrence limit for any number of claimants:

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

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

AND

Property Damage:

☒ Per occurrence limit for any single claimant:

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From January 1, 2010, and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, 5 (Senate Bill 311).

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

☒ **Required by the State** ☐ **Not required by the State**

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

☒ Per occurrence limit for any single claimant:

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

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

Per occurrence limit for any number of claimants:

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

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

AND

Property Damage:

☒ Per occurrence limit for any single claimant:

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

v. EMPLOYERS' LIABILITY.

☐ **Required by the State** ☒ **Not required by the State**

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage. Contractor shall provide proof of insurance of not less than the following amounts as determined by the State:

☐ *\$(the State to enter amount)* Per occurrence limit for any single claimant; and
\$(the State to enter amount) Per occurrence limit for any number of claimants

OR

☐ Per occurrence limit for any single claimant:

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

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

Per occurrence limit for any number of claimants:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.

July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

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

vi. POLLUTION LIABILITY.

☐ **Required by the State** ☒ **Not required by the State**

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under the Agreement or any Contract. Combined single limit per occurrence shall not be less than _____. Annual aggregate limit shall not be less than _____.

B. ADDITIONAL INSURED.

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

C. "TAIL" COVERAGE.

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

D. NOTICE OF CANCELLATION OR CHANGE.

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from this Contractor or its insurer(s) to the State. Any failure to comply with the reporting

provisions of this clause shall constitute a material breach of the Agreement and the Contract and shall be grounds for immediate termination of the Agreement or any Contract by the State or an Authorized Purchaser.

E. CERTIFICATE(S) OF INSURANCE.

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

EXHIBIT D

SUBSCRIPTION SERVICES CONTRACT

This Subscription Services Contract Number _____ (“Contract”) is effective _____ (“Contract Effective Date”) between _____ (“Contractor”) and _____ (“Authorized Purchaser”).

THIS CONTRACT IS ENTERED INTO PURSUANT TO AGREEMENT # 0486 AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE AGREEMENT APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

1. Subscription Services.

The Contractor will provide to the Authorized Purchaser all required services listed in Exhibit B which includes: access to and use of the HP TRIM application, software and data hosting and storage, and helpdesk support services. The Archives Division will provide the training for using HP TRIM. The Contractor may provide training to other software integrations.

2. Subscription Fee and Payment Schedule.

Based on the total monthly fee and number of Users listed below, Authorized Purchaser shall pay Contractor _____ payable in _____ monthly installments commencing upon Authorized Purchaser’s acceptance of the Subscription Services and as further specified in Section 3, below.

[Insert a chart setting out software applications, whether maintenance, support and upgrade protection are included or separate, number of users (or other basis for charges), periodic fee for each line item, the fee payment schedule, the term for each line item and any other considerations or limitations.]

Monthly Fee (\$) Per User	Number of Users

Invoices shall be issued on the _____ day of the month following the calendar month in which the Subscription Services were provided. All undisputed, timely and valid invoices are due in full _____ days after receipt by Authorized Purchaser. The initial pricing in this Contract is and shall remain valid for the Initial Period, defined in Section 6 below, and through the second

(2nd) Renewal Period, defined in Section 6 below.

Invoices shall be provided to the Authorized Purchaser in electronic or paper format as follows:

Authorized Purchaser Name:

Contact Name:

Address:

Phone:

Email Address:

3. Additional Users.

During the term of this Contract, Authorized Purchaser may add additional Users, above the initial number of Users specified in Section 2, to the Subscription Services by executing an amendment to this Contract. Based on the amendment, the monthly installment fee will increase based on the table below for each additional User for the remaining term of the Initial Period and through the second (2nd) Renewal Period commencing on the day the additional Users are specified by Authorized Purchaser.

Monthly Fee (\$) Per User	Number of Additional Users
	<50
	50 to 100
	101 to 250
	251 to 500
	>501

4. Authorized Purchaser Acceptance.

Contractor shall, during or before the initial implementation phase, develop and recommend to Authorized Purchaser an acceptance test that is reasonably constructed to test the ability of the Subscription Services and associated Software Applications, as implemented by Contractor, to produce the results and other Deliverables specified in this Contract. Authorized Purchaser may accept the proposed acceptance test as recommended or modify it as Authorized Purchaser deems reasonable. Contractor shall provide Authorized Purchaser with access to the Subscription Services on or before _____. On the transition date,

Contractor shall assume responsibility for providing ongoing Subscription Services.

Upon the conclusion of any consecutive forty-five (45) day period of production processing from the transition date, when all Service Levels set out below have been met successfully, the Subscription Services shall be deemed accepted, and Authorized Purchaser will notify Contractor in writing. Nothing contained in this Section 4 or any other provision of this Contract shall be deemed to prevent Authorized Purchaser from using any portion of the Subscription Services in a live environment for productive processing, and any such use shall not alter, amend or modify any of Contractor's obligations pursuant to the Contract.

5. Period of Performance.

The period of performance of this Contract shall commence on the Contract Effective Date and shall continue for a period of _____ months plus the interim period between the effective date and the date of acceptance (the "Initial Period"). Thereafter, Authorized Purchaser may renew this Contract twice for additional periods (each a "Renewal Period"), subject to the terms of the Agreement.

Authorized Purchaser may terminate this Contract by providing Contractor with a notice of termination sixty (60) days prior to the termination date.

6. Consulting, Implementation, Training and/or Support Services.

Contractor shall provide the consulting, implementation, training and/or support services related to the Subscription Services as set forth in Section 2.

7. Security Procedures.

Contractor shall define certain policies and procedures that it shall have in place in order to provide the level of security associated with the Subscription Services and with the Service Levels set forth in Section 11. These policies and procedures shall be updated by Contractor from time to time to reflect emerging technologies, business practices and Internet-related issues. Contractor shall attach a copy of these policies and procedures to this Contract as Attachment 1. Contractor shall provide written notice to Authorized Purchaser of any changes made to its security policies and procedures within ten (10) days of such changes, and Attachment 1 shall be updated accordingly.

8. Desktop Specifications.

Contractor warrants that the minimum technical requirements for access to and operation of the Software are: _____. If future releases of the Software require use of newer versions of these web browsers, Contractor will provide a minimum of one hundred and eighty (180) days' written notice to Authorized Purchaser prior to the general release of that Software version.

Additional technical requirements for complete operation of all functionality of the Software include: _____.

9. Transition.

Contractor shall provide a transition plan that is approved by Authorized Purchaser. Subscription Services shall be transitioned and in production, as accepted by Authorized Purchaser, within _____ calendar days from the Schedule Effective Date.

10. Transition Remedy.

In the event that Contractor fails to meet the date for the completion of the transition into production of the Subscription Services, Contractor shall credit Authorized Purchaser one percent (1%) of the monthly Service fees for every business day the transition is late. If Contractor misses the target date by more than thirty days (30) days, Contractor shall be deemed to be in material breach of the Agreement.

If Authorized Purchaser does not meet its obligations as identified in the transition plan provided by Contractor and Authorized Purchaser is the sole cause of a delay in the project, the transition milestone target dates shall be extended for the same amount of time as the delay. Contractor shall promptly notify the Authorized Purchaser Program Manager, in writing, of any delay in the project schedule as a result of Authorized Purchaser's failure to meet any of its obligations identified above. If Contractor fails to notify Authorized Purchaser of any such Authorized Purchaser failure to meet its obligations, Authorized Purchaser shall be conclusively presumed under the Contract to have met its obligations, and consequently, Contractor shall not be entitled to rely on such delay to excuse it from meeting the milestone target dates.

11. Service Levels and Remedies.

11.1 Security Service Level.

The required security processes may include, but are not limited to, the following:

- (i) Contractor shall have staff on duty and at its site 24x7 and capable of identifying, categorizing, and responding to a security incident.
- (ii) Contractor shall notify Authorized Purchaser of any new potential security vulnerability within four (4) hours of discovery. This notification shall include the probable risks associated with the vulnerability.
- (iii) Contractor shall implement a security fix across the application within four (4) hours of approval from Authorized Purchaser.

- (iv) Contractor shall notify the Authorized Purchaser Program Manager within fifteen (15) minutes if Contractor believes that an attack is in process.
- (v) Contractor shall shut down ALL access to the Software or any component of it associated with the Subscription Services within fifteen (15) minutes upon request of the Authorized Purchaser Program Manager or officer of Authorized Purchaser.
- (vi) Contractor shall assist Authorized Purchaser in preparing written responses to audit requirements or findings without charge.
- (vii) Contractor represents and warrants that it has successfully passed a SAS 70 Type II Audit within the past twelve (12) months and shall provide the documented audit results to Authorized Purchaser no later than fifteen (15) days after execution of this Contract.
- (viii) Contractor must conduct and pass a SAS 70 Type II Audit every twelve (12) months during the term of this Contract. Failure by Contractor to pass the audit or to provide the audit results to Authorized Purchaser within fifteen (15) days after receiving the results from the auditor shall constitute a material breach of the Agreement.

11.2 System Response Time Service Level.

Contractor represents and warrants that ninety-five percent (95%) of all transactions shall process at no more than one (1) second; no single transaction shall take longer than five (5) seconds to process. Authorized Purchaser retains the option of using a third party service to validate the performance of Contractor's response times.

If Contractor's system response times fall below the warranted level for two (2) or more consecutive weeks, Authorized Purchaser shall receive service credits in the amount of twenty five percent (25 %) of the Subscription Services fees for that month. If Contractor's system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, Contractor shall be considered to be in default, and Authorized Purchaser may terminate the Agreement without penalty.

Contractor represents and warrants that the above performance Service Levels shall be valid with up to 100,000 Users using the application at any given time.

11.3 Subscription Services Availability Service Level.

Contractor agrees that the Subscription Services shall be available to Authorized Purchaser at least 99.7% of the time each calendar month, measured on a 7 x 24 basis (7 days a week, 24 hours per day).

If the Subscription Services availability percentage falls below 99.7% in any month, Authorized Purchaser shall be entitled to a credit on that month's bill for Subscription Services according to the table below.

Availability Percentage	Percentage of Credit
99.60% to 99.69%	10%
99.50% to 99.59%	20%
99.0% to 99.49%	30%
97.0% to 98.99%	50%
Below 97.00%	75%

11.4 Performance and Availability Scalability.

Contractor represents and warrants that the performance and availability Service Levels shall be valid and applicable with a concurrent User increase of up to _____ Users.

11.5 Notifications to Authorized Purchaser.

Contractor shall provide proactive notifications to Authorized Purchaser regarding scheduled system-maintenance downtime and system upgrades and enhancements. Contractor shall provide Authorized Purchaser with at least seven (7) calendar days' prior written notice of any scheduled outages; such notices shall include the date of the outage and the start and stop times of the outage.

11.6 Additional Environment.

Contractor will provide an additional environment at no additional charge for Authorized Purchaser's testing and/or training purposes, without limitation. Authorized Purchaser agrees not to use the additional environment for production purposes.

11.7 Support and Error Resolution.

Contractor shall establish and maintain the organization and processes necessary to provide support and error-resolution services to Authorized Purchaser. Contractor shall provide support and error-resolution services on a twenty-four (24) hours a day, seven (7) days a week basis via telephone from 8:00 a.m. to 6:00 p.m. in all time zones , with ninety-eight percent (98%) of calls picked up within two (2) rings, and pager service in all other hours, with a call back within five (5) minutes.

Upon receipt of telephone or written notice from the Authorized Purchaser specifying a problem, and upon receipt of such additional information as Contractor may request, Contractor shall respond as described below to resolve reported and reproducible errors in the Subscription Services or SaaS Software, so that the application operates as specified in this Contract. Contractor shall determine the priority level in accordance with the following protocols:

- (i) **SEVERITY 1 – CRITICAL BUSINESS IMPACT.** The production use of the Subscription Services is stopped or so severely impacted that the Authorized Purchaser cannot reasonably continue work; requires round-the-clock attention until the problem is resolved (a “Severity 1 Error”).
 - a. Contractor shall begin work on the error within fifteen (15) minutes of notification;
 - b. Contractor shall engage development staff until the problem is circumvented or corrected; and
 - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (ii) **SEVERITY 2 – SIGNIFICANT BUSINESS IMPACT.** A high-impact problem is affecting Service Levels and/or materially impacting Authorized Purchaser’s use of the Subscription Services. Problem resolution shall be initiated within sixty (60) minutes, and the resolution of these problems requires serious and sustained attention during normal business hours (8:00 am to 5:00 pm, Pacific time, Monday through Friday, exclusive of State holidays) until the problems are circumvented or corrected (a “Severity 2 Error”).
 - a. Contractor shall begin work on the error within sixty (60) minutes of notification;

- b. Contractor shall engage development staff until the problem is circumvented or corrected; and
 - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (iii) **SEVERITY 3 – SOME BUSINESS IMPACT.** This includes problems of general work-queue type and that do not come within the definitions of Severity 1 Error or Severity 2 Error. These problems shall be addressed after Severity 1 Errors and Severity 2 Errors have been corrected and may be pursued during normal business hours on a resources-available basis (a “Severity 3 Error”).
 - a. Contractor shall begin work on the error within one (1) day of notification; and
 - b. Contractor shall engage development staff to provide a workaround and to resolve the problem as soon as possible after notification by Authorized Purchaser.
- (iv) **SEVERITY 4 – MINIMUM BUSINESS IMPACT.** Authorized Purchaser requests information, an enhancement, or documentation clarification regarding the Subscription Services or SaaS Software but there is no impact on the operation of the Subscription Services or SaaS Software. The implementation or production use of the Subscription Services or SaaS Software is continuing and there is no work being impeded at the time (a “Severity 4 Error”).
 - a. Contractor shall provide a response regarding the requested information or documentation clarification within two (2) days of notification by Authorized Purchaser; and
 - b. Contractor shall consider enhancements for inclusion in a subsequent update to the Subscription Services, SaaS Software or Documentation.

12. Termination and Transition Assistance.

If this Contract is terminated, the procedure shall be charted as follows:

Date of Termination	Amount(s) due and owing as of this date	Termination Assistance begins/ends on _____

BY EXECUTING THIS CONTRACT, THE PARTIES AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

AUTHORIZED PURCHASER

By:_____

Name:_____

Title:_____

Date:_____

CONTRACTOR

By:_____

Name:_____

Title:_____

Date:_____

EXHIBIT E

NON-SUBSCRIPTION SERVICES CONTRACT

This Non-Subscription Services Contract Number ____ (“Contract”) is effective _____ (“Contract Effective Date”) between _____ (“Contractor”) and _____ (“Authorized Purchaser”).

THIS CONTRACT IS ENTERED INTO PURSUANT TO AGREEMENT # 0486 AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE AGREEMENT APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

This Contract addresses the specific terms and conditions relating to the Non-subscription Services to be provided by Contractor:

1. Services to be performed:
 - 1.1. Description of Non-subscription Services – *All services in addition to those listed in Exhibit B section b « Standard Services ».*
 - 1.2. Contractor’s Responsibilities and Tasks
 - 1.3. Transition Process, Timeline and Milestones
 - 1.4. Deliverables and Due Dates
 - 1.5. Acceptance Specifications
 - 1.6. Service Levels - Set forth any Service Levels applicable to the Non-subscription Services
 - 1.7. Duration of Project or Ongoing Services
2. Term of the Contract:
3. Sites to be Supported:
4. Pricing: Specify pricing for all Non-subscription Services incorporating all pricing options as appropriate.
5. Reports to be Provided:
6. Invoicing Requirements:
7. Authorized Purchaser Responsibilities:

8. Other Specifications:
9. Project Managers: - All contact persons

Authorized Purchaser Project Manager

Contractor Project Manager

Name:

Name:

Phone Number:

Phone Number:

E-mail:

E-mail:

Address:

Address:

BY EXECUTING THIS CONTRACT, THE PARTIES AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR

AUTHORIZED PURCHASER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT F
VCAF REPORT

EXHIBIT G

CONTRACTOR DATA AND TAX CERTIFICATION

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) 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; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

Federal Tax Number _____

Oregon Tax Number _____

Contractor Signature _____ Date _____

EXHIBIT H

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a professional corporation.)

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. (Please check four or more of the following:)
 - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
 - C. Telephone listing is used for the business that is separate from the personal residence listing.
 - D. Labor or services are performed only pursuant to written contracts.
 - E. Labor or services are performed for two or more different persons within a period of one year.
 - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

EXHIBIT I
REQUEST FOR PROPOSAL
RFP #102-1752-10

EXHIBIT J

CONTRACTOR'S PROPOSAL

[Include price proposal]