|  |  |
| --- | --- |
|  | **Master Services Agreement #\_\_\_\_\_\_\_\_\_** |

This master services agreement (“MSA”) is between the State of Oregon (“State”) acting by and through its Department of Administrative Services (“DAS”) on behalf of state agencies and members of the Oregon Cooperative Purchasing Program (“Authorized Purchasers”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Contractor”) for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Recitals**

A. DAS desires to engage Contractor through this MSA to make available to DAS and other Authorized Purchasers certain \_\_\_\_\_\_\_\_\_\_\_\_\_\_ products and services, as described on Exhibit B (“Products” and “Services”).

B. On \_\_\_\_\_\_\_\_\_\_\_\_, DAS issued RFP #\_\_\_\_\_\_\_\_\_\_\_ to provide authority to directly award contracts to Contractor and other providers of the Products and Services.

C. Contractor desires to provide the Products and perform the Services for DAS, agencies of the State of Oregon that are subject to DAS procurement authority according to ORS 279A.050 and 279A.140 and that are authorized to use this MSA through a delegation of authority according to OAR 125-246-0170 (“Authorized Agencies”), and any non-Authorized Agency participant in the Oregon Cooperative Purchasing Program operated by DAS (“ORCPP Member”), pursuant to the terms of this MSA. DAS, Authorized Agencies and ORCPP Members are collectively referred to as “Authorized Purchasers.”

**Agreement**

DAS and Contractor agree as follows:

**1.** **Purpose of MSA.** This MSA establishes terms and conditions applicable to Contractor and DAS in connection with the Products and Services, including but not limited to:

**1.1.**  the form of the ordering instruments to be used by Authorized Agencies and Contractor to enter contracts for Products, Services or both, including: purchase orders (“POs”) and Work Order Contracts (“WOCs”) or other ordering instruments (collectively, “Contracts”);

**1.2.** the terms and conditions applicable to Contracts;

**1.3.** the process through which Contracts will be created; and

**1.4.** the pricing applicable to Contracts.

Authorized Agencies and Contractor will enter into binding and enforceable contracts for Products or Services or both only by execution of Contracts, substantially in the form attached hereto as Exhibits C-1 and C-2. Other Authorized Purchasers may enter into Contracts substantially in the form of Exhibits C-1 and C-2, but are not required to do so and may use forms or other ordering instruments as agreed upon by the Authorized Purchaser and Contractor.

Each Contract will specify the Products to be delivered or Services to be performed, the associated deliverables to be delivered, and will incorporate the terms and conditions in Exhibit A as applicable to the Contract.

**2. Effective Date and Term.** This MSA is effective on the later of (i) \_\_\_\_\_\_, or (ii) the date that it has been executed by DAS and Contractor, and has been approved as required by applicable law (“Effective Date”). Unless terminated or extended, this MSA expires on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“MSA term”). DAS and Contractor may extend this MSA by written agreement. MSA expiration or termination does not extinguish or prejudice DAS’ right to enforce this MSA with respect to any Contractor breach or any default or defect in Contractor performance that has not been cured.

**3. MSA Documents.** This MSA includes the MSA and its exhibits which are attached and incorporated by reference. If a conflict, inconsistency or ambiguity exists among any portion of this MSA and any other documents, then the issue must be interpreted in the following order of precedence:

**3.1.** This MSA less all exhibits;

**3.2.** Exhibit A, Contract Terms;

**3.3.**  Exhibit B, Description of Products and Services; Pricing;

**3.4.** Exhibit D, DAS Volume Sales Report Template - Data Requirement, Format and Layout;

**3.6.** Exhibit C-1, Purchase Order Form; and

**3.7** Exhibit C-2, Work Order Contract Form.

**4. Firm Offer Established; Pricing Changes.**

**4.1. Firm Offer Established.** This MSA constitutes a firm offer by Contractor regardless of whether any Contract for Products or Services is executed. This MSA is enforceable as a firm offer pursuant to ORS 279B.140 for the MSA term specified in section 2, and all pricing in Exhibit B is valid until the MSA expires or is terminated, unless the pricing is changed according to subsection 4.2. Notwithstanding ORS 72.2050, obligations under this MSA are not revocable by Contractor.

**4.2. Pricing Changes.** Contractor shall keep pricing specified in Exhibit B fixed for at least the first twelve (12) full months of this MSA. Thereafter, DAS and Contractor may adjust pricing no more than once annually by MSA amendment. Contractor shall submit all pricing increase requests to DAS in writing and provide substantiating evidence that each request is based on demonstrable market changes impacting the cost of the Services. Pricing changes will apply to Contracts and amendments to Contracts entered on and after the effective date of the pricing change.

**5. Non-exclusive MSA; Contractor Selection.**

**5.1. Non-exclusivity.** This MSA is not exclusive. Each Authorized Purchaser retains the right to contract for Products or Services or both through any selection process authorized by law, or to perform the Services itself. Neither DAS nor any other Authorized Purchaser guarantees that any specific number of Contracts will be entered or that any specific amount of Products or Services will be required.

**5.2. Contractor Selection.** In the event DAS awards more than one Master Services Agreement, Authorized Purchaser must conduct a best value comparison process to select the contractor for award based upon various factors, including: cost, Product or Services availability, time of performance, or other factors. Authorized Purchaser shall issue a request for quote to all Master Services Agreement holders detailing the Product or Service need and evaluation criteria, including: Product or Service availability, time for delivery or performance, costs, and any other factors. Authorized Purchaser shall award the Contract to the contractor with the offer that is in the best interest of Authorized Purchaser.

**6. Signed Contract Required for Products or Services.**

**6.1.** **Contract Form.** DAS and Authorized Agencies must use a PO or WOC form substantially similar to the forms attached as Exhibits C-1 or C-2. ORCPP Members may use their own forms of PO or WOC as agreed upon with Contractor.

**6.2. Contract Negotiation.** Prior to signing a Contract, Authorized Purchaser and Contractor may negotiate the Products or Services to be included in the Contract from the Description of Products and Services set forth in Exhibit B, including but not limited to the cost of the Products and Services. Authorized Purchaser and Contractor may negotiate a fixed price or maximum amount payable for the Products or Services or both under the Contract based on the pricing specified in Exhibit B. Contractor’s pricing under any resulting Contract shall not exceed the pricing specified in Exhibit B.

**6.3.** **Contract Content.** To order Products or Services, Authorized Purchasers complete the best value selection process set forth in section 5.2 above and must submit a Contract to the selected contractor that specifies all of the following:

**6.3.1.** Language stating that the Contract is submitted under this MSA and the MSA number;

**6.3.2.** Language incorporating all Contract terms and conditions of Exhibit A into the Contract, which may be modified by ORCPP Members only for consistency with applicable law;

**6.3.3.** Clear description of the required Services and associated deliverables;

**6.3.4.** Rates and maximum amount payable for the Services (including travel and other expenses);

**6.3.5.** Required delivery schedule for the Services;

**6.3.6.** Invoicing address; and

**6.3.7.** Name of Authorized Purchaser’s authorized representative and contact information for that individual, including telephone number and e-mail address.

**6.4. Contract Rejection.** Contractor shall reject Contracts that do not comply with this section 6. Contractor also shall reject Contracts that are not from Authorized Purchasers. Contractor may verify ORCPP Members at: <http://www.oregon.gov/DAS/SSD/SPO/index.shtml>.

**6.5. Contract Creation.** Each fully executed Contract creates a separate contract between Authorized Purchaser and Contractor that is enforceable according to its terms and is independent of all other executed Contracts. Each Contract consists only of the terms specified for Contracts in this MSA and no other terms, regardless of source. DAS is an intended beneficiary under each Contract between Authorized Purchasers and Contractor. DAS is not obligated or liable to Contractor under any Contract unless DAS is purchasing the Products or Services as the Authorized Purchaser.

**6.6. Authorized Purchasers’ Liability under Contracts.** Contractor shall look solely to the Authorized Purchaser for any rights and remedies Contractor may have at law or in equity arising under any Contract between Contractor and the Authorized Purchaser. Contractor acknowledges and agrees that DAS is not liable to Contractor under any Contract entered into between Contractor and an Authorized Agency or an ORCPP Member unless DAS is purchasing the Services as the Authorized Purchaser.

**7. Payment.** Authorized Purchasers will pay Contractor for Products or Services and associated deliverables according to the payment methodology specified in the applicable Contract. Authorized Purchasers will pay Contractor only for Products or Services that Contractor has delivered or completed and Authorized Purchaser has accepted.

**8. Products and Services; Pricing.** Attached hereto as Exhibit B is a list of the Products and Services and applicable price available pursuant to this MSA.

**9. Volume Sales Report and Vendor Collected Administrative Fee.**

**9.1. Volume Sales Report (“VSR”).**

**9.1.1.** Contractor shall submit a VSR to DAS no later than thirty (30) Calendar days following the end of each calendar quarter through the MSA term (“Calendar Quarter”). The first Calendar Quarter begins on the Effective Date, and each subsequent Calendar Quarter begins the day following the end of the immediately preceding Calendar Quarter. Each Calendar Quarter ends on the earliest date of the following to occur after the beginning of the Calendar Quarter: March 31, June 30, September 30, or December 31.

Contractor shall include the following information in each VSR:

**a.** Complete and accurate details of gross sales amounts made, less any credits to, Authorized Purchasers, under all Contracts during the Calendar Quarter for Services delivered;

**b.** All information requested in Exhibit D, DAS Volume Sales Report Template - Data Requirement, Format and Layout; and

**c.** All other information that DAS may reasonably request.

If Contractor did not receive any payments during the Calendar Quarter for Services delivered under any Contracts, Contractor shall deliver a VSR to DAS within the timeframe specified in this subsection 9.1.1 that specifies the Calendar Quarter covered by the report and that no Services were delivered to any Authorized Purchasers during that Calendar Quarter.

**9.1.2. Data Medium and Delivery Medium.** Contractor shall deliver VSRs in MS Excel (.xls) format to DAS by e-mail. DAS will not accept hard copies of VSRs. DAS will accept VSRs on CDs only if the size of the electronic VSR file prohibits transmission of the VSR to DAS by e-mail. DAS, through its MSA Administrator, may waive some or all of these requirements in writing.

**9.1.3. Receipt/Acceptance.** Contractor shall deliver the first VSR required under this MSA to the DAS Contract Administrator for review and approval. Upon approval, Contractor shall deliver this first VSR and all subsequent VSRs to VCAF.REPORTING@oregon.gov. DAS may challenge or dispute the validity of any VSR at any time during the term of this MSA.

DAS may terminate this MSA pursuant to section 13.3 if Contractor fails to deliver a VSR according to this section 9.1.

**9.2. Vendor Collected Administrative Fee (“VCAF”).**

**9.2.1.** Contractor shall remit to DAS a VCAF in the amount of one percent (1%) of Contractor's gross sales amounts made, less any credits to, Authorized Purchasers during each Calendar Quarter. Contractor shall not reflect the VCAF as a separate line item charge to Authorized Purchasers.

**9.2.2.** DAS will deliver an invoice the Contractor for the VCAF based on the information in each VSR.

**9.2.3.** Contractor shall remit each VCAF payment to DAS by check within forty-five (45) Calendar Days following the end of each Calendar Quarter to:

State of Oregon

Department of Administrative Services

Attn: Shared Financial Services/PS

155 Cottage Street NE

Salem, Oregon 97301

DAS will not accept any other form of payment unless specifically approved by the DAS MSA Administrator.

**9.2.5.** Any VCAF payments Contractor makes or causes to be made to DAS after the payment due date shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until Contractor pays the overdue amount in full. DAS' right to interest on late payments does not preclude DAS from exercising any of its other rights or remedies pursuant to this MSA or otherwise with regards to Contractor's failure to make timely payment.

**9.2.6.** Contractor shall maintain all financial records under this MSA in accordance with generally accepted accounting principles, and all other records in such a manner as to clearly document Contractor’s performance. Upon reasonable notice and during Contractor’s customary business hours, Contractor shall permit DAS and any person authorized by DAS, to perform examinations and audits and make excerpts and transcripts of Contractor’s records related to this MSA and Contracts to determine and verify the figures reported in any VSR. If any audit reveals VCAF underpayment, Contractor shall immediately pay the amount of underpayment, together with all applicable interest at the rate specified in section 9.2.5. At DAS’ request, Contractor shall pay the reasonable cost of any audit that reveals a VCAF underpayment may or does exist, as determined by DAS.

Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this MSA, or until the conclusion of any audit, controversy, or litigation arising out of or related to this MSA, whichever date is later

**10. Representations and Warranties:** Contractor represents and warrants to DAS that:

**10.1.** Contractor is not an “officer,” “employee,” or “agent” of DAS, as those terms are used in ORS 30.265;

**10.2.** Contractor fully understands and will perform its obligations under this MSA;

**10.3.** Contractor is qualified to do business in the State of Oregon and will remain qualified throughout the MSA term;

**10.4.** Contractor is not in arrears in the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and will not become so during the MSA;

**10.5.** Contractor has no undisclosed liquidated and delinquent debt owed to the State or any agency, board, commission, department or division of the State.

**10.6.** Contractor will comply with all federal, state, and local laws, ordinances, rules, regulations, and executive orders, as may be adopted or modified from time to time and as applicable to its performance under this MSA;

**10.7.** 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;

**10.8.** Contractor’s performance under this MSA to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this MSA;

**10.9.** Contractor represents and warrants that the personnel providing services under this MSA are employees of Contractor; that Contractor withholds applicable income taxes from the pay of its employees; that Contractor pays workers’ compensation insurance premiums arising from the employment of its employees under this MSA; that Contractor makes all other applicable tax and related payments arising from that employment (including without limitation social security tax payments); and that Contractor provides employee benefits to its employees, including without limitation health insurance benefits, vacation benefits, and retirement benefits;

**10.10.** Contractor (to the best of Contractor’s knowledge), for a period of no fewer than six (6) calendar years preceding the Effective Date, faithfully has complied with:

**10.10.1.** All tax laws of this state, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318;

**10.10.2.** Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor;

**10.10.3.** Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

**10.10.4.** Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**10.11.** Contractor possesses and will maintain at its own expense all required licenses, certifications and permits necessary to deliver Services under this MSA and all Contracts;

**10.12.** Contractor has the power and authority to enter into and perform this MSA and all Contracts;

**10.13.** This MSA, when executed and delivered, is a valid and binding obligation of Contractor enforceable according to its terms;

**10.14.** 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 provide the Products and perform the Services described in this MSA in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Products and Services and Contractor shall, at all times during the term of this MSA and any Contract, be qualified, professionally competent, and duly licensed to provide the Products and perform the Services;

**10.15.** The Products will materially conform to acceptance criteria set forth in the MSA and the Contract, including the Statement of Work and any Documentation provided by Contractor, and are free from error or defect that materially impairs their use, and be free from material defects in materials, workmanship, or design;

**10.16.** Except as otherwise provided in this MSA or a Contract, Contractor shall transfer all Products 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;

**10.17.** The Products and Services are free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this MSA or a Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Products or Services expressly permitted by the terms and conditions by the license under which it was provided: and

**10.18.** When used as authorized by this MSA or any Contract, no Work Product infringes nor will Authorized Purchaser’s use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

The warranties set forth in this section 10 are in addition to, and not in lieu of, any other warranties provided in this MSA or in any Contract.

**11. MSA Default.** Contractor is in default of this MSA if:

**11.1.** Contractor fails to honor pricing at least at or lower than the pricing specified in Exhibit B; or

**11.2.** Contractor has undisclosed liquidated and delinquent debt owed to the State of Oregon or any agency, board, commission, department or division of the State; or

**11.3.** Contractor violates or fails to perform any covenant, representation, warranty, obligation or certification under this MSA.

Before Contractor can be found in default of this MSA, DAS shall first deliver a notice of default to Contractor. The notice must describe the specific nature of the default, cite the specific provisions of this MSA that have been violated, indicate whether the default can be cured, and specify the time period in which the default must be cured, if cure is permitted.

**12. Remedies for Default.** If Contractor is in default under section 11, DAS may, at its option, pursue any or all remedies available to it under this MSA and at law or in equity, including without limitation, termination of this MSA pursuant to section 13 orpursuing a claim for damages, or undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. (offsets or garnishment may be initiated after the Contractor has been given notice if required by law), or any or all.

**13. Termination.**

**13.1. Mutual Termination.** The parties may terminate this MSA upon the date specified in written agreement.

**13.2. DAS’ Right to Terminate.** DAS may, at its sole discretion, terminate this MSA as follows:

**13.2.1.** DAS may terminate this MSA upon thirty (30) calendar days’ prior written notice to Contractor or any later date as specified in the written notice; or

**13.2.2.** DAS may terminate this MSA immediately if federal or state laws, rules, regulations, executive orders, or guidelines are modified in such a way that would prohibit any party’s performance under this MSA.

**13.3. DAS’ Right to Terminate for Cause**. In addition to any other rights and remedies DAS may have under this MSA, DAS may terminate this MSA, in whole or in part, immediately upon written notice to Contractor of Contractor’s default under section 11.

**13.4. Effect of MSA Termination or Expiration.** Upon termination or expiration of this MSA, Contractor shall continue to provide the Products or Services and meet its obligations under all effective Contracts issued prior to MSA termination or expiration, unless such Contract is otherwise terminated pursuant to its terms. The termination or expiration of this MSA will be without prejudice to the rights of the parties accrued up to the date of such termination or expiration.

**14. Contractor’s Compliance with Tax Laws.**

**14.1.** Contractor must, throughout the term of this MSA and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, “tax laws” includes all the provisions described in subsection 10.10.1 through 10.10.4 of this MSA.

Any violation of this subsection 14.1 constitutes a material breach of this MSA. Further, any violation of Contractor’s warranty in subsection 10.10 of this MSA, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state, also constitutes a material breach of this MSA. Any violation shall entitle DAS to terminate this MSA, to pursue and recover any and all damages that arise from the breach and the termination of this MSA, and to pursue any or all of the remedies available under this MSA, at law, or in equity, including but not limited to:

**14.1.** Termination of this MSA, in whole or in part;

**14.2.** Exercise of the right of setoff, or garnishment, if applicable, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s setoff right, without penalty; and

**14.3.** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this MSA.

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

**15. Indemnity.** **Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and DAS, and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses** **of any nature whatsoever, including** **personal injury,**  **death, damage to real property and damage to tangible or intangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this MSA or any** **Contract including:**

**15.1. Any claim** **that** **Contractor, a subcontractor, or Contractor’s staff or a subcontractor’s staff are employees of the State or Authorized Purchaser for any reason; and**

**15.2 Any claim against the State or Authorized Purchaser, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this MSA.**

**Without limiting the generality of the foregoing, Contractor will** **have no obligation to indemnify the State of Oregon or DAS from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of DAS or its officers, employees or agents.**

**16. Governing Law**. This MSA is governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

**17. Venue and Consent to Jurisdiction.** Any claim, action, suit, or proceeding (collectively, “Claim”) between DAS and Contractor that arises from or relates to this MSA must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 17. In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim, or (ii) consent by the State of Oregon to the jurisdiction of any court.

**18. MSA Contract Administrators.** The MSA Contract Administrators for DAS and for Contractor are the individuals identified in this section 18 or any other individual identified in writing as the MSA Administrator to the other party.

**DAS MSA Contract Administrator: Contractor MSA Contract Administrator:**

**[name, address, contact information] [name, address, contact information]**

**19. Amendment.** This MSA may be amended, modified, or supplemented only by a written amendment signed by DAS and Contractor. Any amendment that provides for additional Products or Services, goods or other services may only provide for Products, Services, goods or services directly related to the scope of Products and Services, goods and services described in the Special Procurement, and no amendment will be effective until all requisite signatures and approvals are obtained. Either DAS or Contractor may request a change to this MSA, including all Exhibits hereto, by submitting a written proposal describing the desired change to the other party.

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

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

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

**22. Oregon False Claims Act**. Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this MSA and any Contract, including the procurement process relating to this MSA, which constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this MSA, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this MSA or any Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this MSA or any Contract or any other provision of law.

**23. Compliance with Executive Order 21-29.** Contractor shall comply with EO 21-29. Contractor certifies that for the term of this MSA and any Contract or the duration of EO-21-29, whichever expires or terminates first, each Worker who provides goods and services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies. Contractor shall maintain in its records Proof of Vaccination or permitted exceptions under section 6 of EO 21-29 for such Workers providing goods and services at an Executive Branch Worksite. Contractor shall provide written certification of its compliance with EO 21-29 on request of the State. The State reserves the right to request the documentation supporting Contractor’s certification. A cure period is not required for Contractor’s failure to comply with this section.

For purposes of this MSA and any Contract,

“EO 21-29” means Governor of the State of Oregon’s Executive Order 21-29 as may be amended, <https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf>.

FAQ” means the Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions as may be amended.

[ExecutiveOrder21-29\_ContractorFAQ.pdf (oregon.gov)](https://www.oregon.gov/das/Procurement/Documents/ExecutiveOrder21-29_ContractorFAQ.pdf)

The terms "Executive Branch," "COVID-19," "Fully Vaccinated," "Proof of Vaccination," "Employee," and "Worker" have the meanings defined in EO 21-19 and the term “Worksite” has the meaning defined in the FAQ.

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

**Authorized Signatures:**

**Contractor:**

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

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

**The State of Oregon acting by and through its Department of Administrative Services**

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

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

**Approved pursuant to ORS 291.047**

Oregon Department of Justice

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

 Assistant Attorney General

**EXHIBIT A**

**to Master Agreement #\_\_\_\_\_**

**CONTRACT TERMS AND CONDITIONS**

These Contract Terms and Conditions apply to all Contracts issued under this MSA, including Purchase Orders, Work Order Contracts or other agree upon ordering instruments.

**1. DEFINITIONS**. In addition to any other terms defined elsewhere in this Contract, the following defined terms apply:

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

**1.2. “Calendar Day”** means any day on the Western calendar.

**1.3. “Contract”** means any Purchase Order or Work Order Contract or other agreed upon ordering instrument issued under this MSA.

**1.4. “Deliverables”** means all Products and items that Contractor is required to provide to Authorized Purchaser under a Contract as part of the Services, including Work Product.

**1.5. “Work Product”** means every invention, discovery, work of authorship, trade secret, or other tangible or intangible item and all Intellectual Property rights therein that Contractor is required to deliver to Authorized Purchaser pursuant to the Services.

**2. Non-Exclusive Contract.** Contractor acknowledges and agrees that by executing this Contract, Authorized Purchaser is not granting to Contractor the exclusive right to provide the Products or perform the Services, or any other services, for Authorized Purchaser. Authorized Purchaser reserves the right to:

**2.1.** Contract with other entities to provide Authorized Purchaser with products or services that are the same or similar to those provided to Contractor under this Contract; and

**2.2.** Perform any or all of the Services itself.

**3. Compensation.**  Following Contractor’s delivery or completion, and Authorized Purchaser’s acceptance of the Products or Services, Authorized Purchaser will pay Contractor as specified in this Contract, based on the pricing established in MSA Exhibit B. Contractor represents that all pricing for Products and Services under this Contract is equal to or better than the pricing specified in the MSA.

**4. Funds Available and Authorized.** Contractor will not be compensated for Products delivered or Services performed under this Contract by any other agency or department of the State of Oregon other than Authorized Purchaser. Authorized Purchaser believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Authorized Purchaser’s biennial appropriation or limitation. Contractor understands and agrees that Authorized Purchaser’s payments under this Contract are 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 this Contract.

**5. Invoicing and Payment**

**5.1. Invoices.** Contractor shall submit invoices for accepted Products or completed and accepted Services or Deliverables according to the payment schedule as set forth in this Contract. Contractor shall submit invoices to Authorized Purchaser as designated in this Contract. Contractor shall include the MSA number and applicable Contract number on all invoices. Contractor also shall include a description of all Services performed, Products or Deliverables delivered, applicable pricing, total amount invoiced and the address for payment.

**5.2. Payment.** Authorized Purchaser shall pay all undisputed amounts within thirty (30) days from receipt of each invoice determined to be correct following Authorized Purchaser’s review under section 5.3. Contractor may assess late payment charges only to the extent permitted by ORS 293.462.

**5.3. Invoice Review / Dispute Process.** Authorized Purchaser will review each invoice and will either approve payment of the amount invoiced or notify Contractor of any errors or disputed charges. Authorized Purchaser may withhold payment of any amounts that are disputed.

If an error or dispute arises concerning the amount charged in an invoice, Authorized Purchaser will notify Contractor of the disputed charge. Upon notification of dispute, Contractor shall submit to Authorized Purchaser all documentation Authorized Purchaser requires to substantiate the amount charged.

Authorized Purchaser, in its sole discretion, will determine if the supporting documentation provides sufficient substantiation for the disputed charges. If Authorized Purchaser determines that the supporting documentation is sufficient, Authorized Purchaser will notify Contractor and pay Contractor the amount charged in the invoice. If Authorized Purchaser determines the supporting documentation supports payment of an amount less than originally invoiced, Authorized Purchaser will notify Contractor of the amount Authorized Purchaser believes is due under the invoice, and Authorized Purchaser will pay the invoice in that lesser amount.

**6. Performance, Delivery and Acceptance.**

**6.1. Responsibilities of Contractor.** Contractor shall provide the Products and perform the Services in accordance with the standards and methodologies set forth in the Statement of Work and this Contract. Contractor shall cooperate with Authorized Purchaser and its designated third parties by providing access and information on the Products’ architecture, design, operating environment, interfaces and operating parameters as necessary.

**6.2. Delivery and Review of Deliverables.** Unless otherwise agreed, within ten (10) Business Days following Contractor’s delivery of Services or Deliverables, or both, Authorized Purchaser will review the Services and Deliverables to determine whether the Services and Deliverables meet the Contract requirements. If Authorized Purchaser determines that the Services and Deliverables meet the Contract requirements, Authorized Purchaser will notify Contractor of Authorized Purchaser’s acceptance.

If Authorized Purchaser determines that the Services or Deliverables, or both, do not meet the Contract requirements, Authorized Purchaser will notify Contractor of Authorized Purchaser’s rejection. Within ten (10) Business Days following Contractor’s receipt of Authorized Purchaser’s rejection notice, Contractor shall revise and redeliver to Authorized Purchaser the rejected Services or Deliverables at Contractor’s sole expense to ensure that the Services or Deliverables meet the Contract requirements as determined by Authorized Purchaser. Authorized Purchaser will thereafter review of the revised Services or Deliverables and notify Contractor of Authorized Purchaser’s acceptance or rejection within a ten (10) Business Days following Authorized Purchaser’s receipt of Contractor’s revised Services or Deliverables. This process is an iterative process.

Contractor’s failure to deliver Services or Deliverables that meet the specifications and performance standards after Authorized Purchaser’s second review may constitute a default by Contractor, if Authorized Purchaser chooses not to allow Contractor any further attempts to revise and redeliver the Services or Deliverables, or both. Upon such default, Contractor shall refund to Authorized Purchaser all amounts paid by Authorized Purchaser for the Deliverables or the Services related to such Deliverables. All such refunds are in addition to, and not in lieu of, any other remedies Authorized Purchaser may have for Contractor’s default.

**6.3. Business Continuity Management and Disaster Recovery.** Contractor shall deliver, maintain, and upgrade as necessary, Business Continuity Management and Disaster Recovery Plan and Procedures for the Products and Services, acceptable to Authorized Purchaser. In the event of a disaster, Contractor shall comply with the provisions of and deliver the Products or Service according to the Business Continuity Management and Disaster Recovery Plan and Procedures.

**6.4. Performance Metrics and Service Level Guarantees.** In its provision of the Products and Services,Contractor shall meet the performance metrics and service level guarantees set forth in the Contract. Contractor shall provide, maintain, and upgrade any hardware and related equipment, and software provided by Contractor and required for delivery and operation of the Products and Services If Contractor fails to meet a performance standard, Contractor shall (i) investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the failure, including performing a root cause analysis of the failure; (ii) advise Authorized Purchaser, as and to the extent requested by Authorized Purchaser, of the status of remedial efforts being undertaken with respect to such failure; (iii) minimize the impact of and correct the problem and begin meeting the performance standard; and (iv) take appropriate preventive measures so that the failure does not recur.

Contractor shall pay the damages or issue service credits as agreed to in this Contract if Contractor fails to provide the Products or Services as and when required by this Contract or fails to meet the performance metrics and service level guarantees specified in this Contract. This section does not limit Authorized Purchaser’s rights with respect to the events upon which Authorized Purchaser may rely as a basis for termination of this Contract for cause.

**6.5. Responsibilities of Authorized Purchaser.** If this Contract requires Authorized Purchaser to provide any information or resources, and Authorized Purchaser fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner for a period that does not exceed ten (10) Calendar Days, Contractor’s sole remedy is an extension of the applicable delivery dates corresponding to the delay. If Authorized Purchaser’s failure to provide such resources exceeds ten (10) Calendar Days, and Contractor can show to the reasonable satisfaction of Authorized Purchaser, that Authorized Purchaser’s failure has resulted in an unavoidable increase in the cost of the Services required for the Statement of Work then Contractor will be entitled to recover from Authorized Purchaser the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates or recover for increased costs may be exercised only if Contractor provides Authorized Purchaser with reasonable notice of Authorized Purchaser's failure and Contractor uses commercially reasonable efforts to perform notwithstanding Authorized Purchaser's failure to perform.

**7. Contractor’s Personnel.**

**7.1. Key Persons.** Contractor’s Key Persons are identified on MSA Exhibit B or Contract, Exhibit No. 1. The hourly rates applicable to each Key Person are specified in MSA Exhibit B. Contractor acknowledges and agrees that a significant reason Authorized Purchaser selected Contractor and is entering into this Contract is because of the special qualifications of each Key Person. Authorized Purchaser is engaging the expertise, experience, judgment, and personal attention of such Key Persons under this Contract. Neither Contractor nor any Key Person shall delegate performance of the duties and obligations of such Key Person under this Contract to any other employee, agent or subcontractor of Contractor unless Authorized Purchaser provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions so that the Key Person is no longer available to provide Authorized Purchaser with that Key Person’s services unless Authorized Purchaser provides prior written consent to the reassignment or transfer, or the reassignment or transfer is required based on the termination of employment, illness, death, disability or other similar cause.

If Contractor requests Authorized Purchaser’s consent to a delegation, reassignment, transfer or other replacement of a Key Person, Authorized Purchaser may meet with the Key Person and review the qualifications of the proposed substitute personnel before providing its consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Contractor shall not charge Authorized Purchaser, and Authorized Purchaser will not pay, for any replacement Key Person while that Key Person acquires the necessary skills and knowledge to continue the Services. Such period of non-charge will be agreed upon by the parties, but not extend for more than twenty-eight (28) Calendar Days. All replacement personnel approved by Authorized Purchaser are deemed Key Persons for purposes of this Contract, and this Contract is deemed amended to include those Key Persons.

**7.2. Subcontracts.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Authorized Purchaser’s prior written consent. In addition to any other provisions Authorized Purchaser may require, Contractor shall include in any permitted subcontracts under this Contract a requirement that the subcontractor be bound by sections 5, 6, 8, 9, 11, 12, 14, 17, 20, 29, and 30 of this Contract as if the subcontractor were the Contractor. Authorized Purchaser’s consent to any subcontractor shall not relieve Contractor of any of its duties or obligations under this Contract.

**7.3. Successors and Assigns.** Contractor shall not assign or transfer any of its interest in this Contract without Authorized Purchaser’s prior written consent. This Contract is binding upon and shall inure to the benefit of Authorized Purchaser and Contractor, and their respective successors and permitted assigns.

**7.4 Cooperation.** Contractor understands and agrees that, as part of this Contract, Contractor may be required to work with other Authorized Purchaser contractors who may be working on this or similar projects. Authorized Purchaser and Contractor acknowledge and agree that this cooperation is essential to the mutual goal of both parties for accurate and valuable use by Authorized Purchaser. Contractor shall create and maintain a cooperative working relationship between and among Authorized Purchaser and other entities and their respective representatives involved in representing Authorized Purchaser’s priorities at the federal and statewide levels, to further the interests of Authorized Purchaser to result in the Services begin successfully completed on time and within budget.

In the event of a conflict between contractors who must cooperate, contractors shall notify the Authorized Purchaser’s contract administrator and abide by Authorized Purchaser’s direction(s).

**7.5**  **Authorized Purchaser Facilities and Networks; Access and Security.** Authorized Purchaser shall permit Contractor and Contractor personnel access to Authorized Purchaser facilities and networks, providedContractor and Contractor personnel comply with all Authorized Purchaser security and access policies, rules, procedures, and regulations for access to Authorized Purchaser’s facilities and networks.

**8. Confidentiality / Non-Disclosure.**

**8.1.** **Confidential Information.** Each party acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this Contract, be exposed to or acquire information that is confidential to the other party or the other party’s clients. Any and all information of any form obtained by one party or its employees or agents in the performance of this Contract is confidential information of the other party (“Confidential Information”). The parties shall treat any reports or other documents or items (including software) which result from the use of the Confidential Information by the recipient of such information with respect to confidentiality in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document; (ii) is furnished by the party disclosing such information to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in the receiving party’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than the discloser without the obligation of confidentiality, (v) is disclosed with the written consent of the disclosing party, or; (vi) is independently developed by employees or agents of the receiving party who can be shown to have had no access to the Confidential Information.

**8.2. Duties of Care.** The recipient of Confidential Information shall hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own Confidential Information, and the recipient shall not 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 required by law or otherwise as contemplated by this Contract or reasonably related thereto, including without limitation the use by Authorized Purchaser contractors who need to access or use the Confidential Information for any valid business purpose, and to advise each of its employees and contractors of their obligations to keep Confidential Information confidential.

**8.3**. **Prevention of Unauthorized Use or Disclosure.** Each party shall use commercially reasonable efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.

**8.4.** **Non-disclosure.** Each party agrees that, except as provided in this Contract or directed by the other, it will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Contract each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.

**8.5.** **NDAs and Background Checks.** Contractor agrees to comply with all reasonable requests by Authorized Purchaser to ensure the confidentiality and nondisclosure of Authorized Purchaser’s Confidential Information, including without limitation (i) obtaining nondisclosure agreements from Contractor’s employees and agents who are performing Services and providing copies of such agreements to Authorized Purchaser, (ii) performing criminal background checks on each of Contractor’s employees and agents who are performing Services, and providing a copy of the results to Authorized Purchaser, and (iii) complying with Authorized Purchaser’s access and security policies and procedures.

**8.6.** **Public Records Laws.** Authorized Purchaser’s obligations of confidentiality, if any, are subject to the Oregon Public Records Laws, ORS 192.311 through ORS 192.478 and the Oregon Custody and Maintenance of Records Laws, ORS 192.005 through192.170.

**8.7. Injunctive Relief and Other Remedies.** Each party acknowledges that breach of this section 8, including disclosure of any Confidential Information may give rise to irreparable injury which may be inadequately compensable in damages. Accordingly, each party may seek injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the other and are reasonable in scope and content.

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

**9. Independent Contractor; Taxes and Withholding.**

**9.1.** Contractor shall perform all Services as an independent contractor. Although Authorized Purchaser reserves the right to determine the delivery schedule for the Services to be performed and evaluate the quality of the completed performance,

Authorized Purchaser cannot and will not control the means or manner of Contractor’s performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**9.2.** If Contractor is currently performing services for the State of Oregon or the federal government, Contractor, by signing this Contract, declares and certifies that:

**9.2.1.** Contractor’s delivery of Services creates no potential or actual conflict of interest as defined by ORS 244;

**9.2.2.** No rules or regulations of Contractor’s employing agency (state or federal) would prohibit Contractor’s Services under this Contract;

**9.2.3.** If applicable, Contractor meets the specific independent contractor standards of ORS 670.600; and

**9.2.4.** Contractor is not an “officer,” “employee,” or “agent” of Authorized Purchaser as those terms are used in ORS 30.265.

**9.3.** Contractor is responsible for all federal or state taxes applicable to compensation or payments to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amounts 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 to Contractor under this Contract, except as a self‑employed individual.

**10. Representations and Warranties.**

**10.1.** Contractor’s General Representations and Warranties. Contractor represents and warrants to Authorized Purchaser that:

**10.1.1.** Contractor is not an “officer,” “employee,” or “agent” of DAS or Authorized Purchaser, as those terms are used in ORS 30.265;

**10.1.2.** Contractor fully understands and will perform its obligations under this Contract and will not make any claims for, or have any rights to relief based on its claim that it misunderstood the terms of this Contract, or lacked information related to its required performance under this Contract;

**10.1.3.** Contractor is qualified to do business in the State of Oregon and will remain qualified throughout the Contract term;

**10.1.4.** Contractor is not in arrears in the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and will not become so during the Contract term;

**10.1.5.** Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

**10.1.6.** Contractor will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this Contract.

**10.1.7.** 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;

**10.1.8.** Contractor’s performance under this Contract to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Contract;

**10.1.9.** Contractor represents and warrants that the personnel providing services under this Contract are employees of Contractor; that Contractor withholds applicable income taxes from the pay of its employees; that Contractor pays workers’ compensation insurance premiums arising from the employment of its employees under this Contract; that Contractor makes all other applicable tax and related payments arising from that employment (including without limitation social security tax payments); and that Contractor provides employee benefits to its employees, including without limitation health insurance benefits, vacation benefits, and retirement benefits;

**10.1.10.** Contractor (to the best of Contractor’s knowledge, after due inquiry), for a period of no fewer than six (6) calendar years preceding the Effective Date of this Contract, Contractor faithfully has complied with:

* All tax laws of this state, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318;
* Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor;
* Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
* Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions;

**10.1.11.** Contractor possesses and will maintain at its own expense all required licenses, certifications and permits necessary to deliver Services under this Contract;

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

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

**10.1.14.** 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 this Contract according to 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 this Contract;

**10.1.15.** The Services and each Deliverables delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards or requirements set forth in this Contract; and

**10.1.16** Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

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

**11. Ownership and Licenses.**

**11.1. Work Product.** Authorized Purchaser owns all Work Product**.** Work Product includes everything that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s subcontractors or agents (either alone or with others) pursuant to the Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

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

**11.3. Authorized Purchaser Data.** Authorized Purchaser owns all Authorized Purchaser Data and background information, including all of its clients’ data and information, provided to or collected by Contractor pursuant to this 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, including Authorized Purchaser Data, and Work Product only to fulfill the purposes of this Contract. Authorized Purchaser’s license to Contractor is limited by the term of the Contract and the confidentiality obligations of this Contract.

**11.4. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Authorized Purchaser. Except as expressly set forth in this Contract, nothing in this Contract may 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.

**11.5. No Rights in Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

**11.6. Prohibition on Data Mining.** Contractor shall not capture, maintain, scan, index, share or use Authorized Purchaser Data stored or transmitted by the Products or Services, or otherwise use any data-mining technology, for any non-authorized activity, and shall not permit its agents or subcontractors to do so. For purposes of this requirement, “non-authorized activity” means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Contract.

**12. Indemnity.**

**12.1.** CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY AUTHORIZED PURCHASER AND THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL THIRD PARTY CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, STATUTORY PENALITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER including (i) any claim that Contractor, a subcontractor, or a Contractor EMPLOYEE or a subcontractor’s EMPLOYEE are employees of the State or AUTHORIZED PURCHASER for any reason, and (ii) any claim against the State or AUTHORIZED PURCHASER, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this Contract, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

**12.2.** THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTEREST OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE’S SOLE DISCRETION IT DETERMINES THAT:

**12.2.1.** PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED;

**12.2.2.** COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES AND AGENTS;

**12.2.3.** IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR

**12.2.4.** THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY.

CONTRACTOR’S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS.

**13. ASSIGNMENT OF ANTITRUST RIGHTS.** CONTRACTOR IRREVOCABLY ASSIGNS TO AUTHORIZED PURCHASER ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH THE CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO THE CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE CONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT AUTHORIZED PURCHASER’S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM OR RELIEF OR CAUSE OF ACTION. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS AGREEMENT TO IRREVOCABLY ASSIGN TO AUTHORIZED PURCHASER, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO THE CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT AUTHORIZED PURCHASER’S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM OR RELIEF OR CAUSE OF ACTION.

**14. Suspension;Termination.**

**14.1. Authorized Purchaser’s Right to Suspend Performance.**  Authorized Purchaser may, at its sole discretion, suspend Contractor’s Services under this Contract, upon written notice by Authorized Purchaser to Contractor, setting forth the length of the proposed suspension.

**14.1.1 Stop-Work Notice.** Authorized Purchaser may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work required by this Contract for a period of up to ninety (90) Calendar Days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the Stop Work Notice. Within a period of ninety (90) Calendar Days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Authorized Purchaser will either:

* Cancel or modify the Stop Work Notice by a supplementary written notice; or
* Terminate the work as permitted by either the Default or the Convenience provisions of section 14, Termination.

If the Stop Work Notice is canceled, Authorized Purchaser may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete this Contract and the Contract price by a duly executed amendment, inclusive of any ramp-up time required to for Contractor to resume Services.

**14.2. Parties’ Right to Terminate for Mutual Consent.** This Contract may be terminated at any time by mutual written consent of the parties.

**14.3. Authorized Purchaser’s Right to Terminate for Convenience.** Authorized Purchaser may, at its sole discretion, terminate this Contract, in whole or in part, upon thirty (30) Calendar Days written notice to Contractor.

**14.4. Authorized Purchaser’s Right to Terminate for Cause.** Authorized Purchaser may terminate this Contract, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

**14.4.1.** If Authorized Purchaser’s funding from revenue sources is not obtained and continued at levels sufficient to allow for compensation for the Products or Services or both, in Authorized Purchaser’s sole administrative discretion, this Contract may be terminated or modified to accommodate a reduction in funds;

**14.4.2.** If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services is no longer allowable or appropriate for purchase under this Contract;

**14.4.3.** If any license or certificate required by law or regulations to be held by the Contractor to provide the Services required by this Contract is for any reason denied, revoked, or not renewed;

**14.4.4.** If the Authorized Purchaser discovers that Contractor is in default for the payment of taxes or any other amount owed to a government entity; or

**14.4.5.** If the Authorized Purchaser discovers that Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State; or

**14.4.6.** Contractor fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor’s performance under this Contract according to its terms, and such breach, default or failure is not cured within ten (10) Calendar Days after delivery of Authorized Purchaser’s notice, or such longer period as Authorized Purchaser may specify in such notice.

**14.5. Contractor’s Right to Terminate for Cause.** Contractor may terminate this Contract if Authorized Purchaser commits any material breach or default of any covenant, obligation or agreement under this Contract and Authorized Purchaser fails to cure the breach or default within thirty (30) Calendar Days after receipt of Contractor’s written notice or such longer period of cure as Contractor may specify in such notice. Contractor shall state in the written notice of breach or default the termination date for Authorized Purchaser’s failure to cure, which must not be less than thirty (30) Calendar Days following Authorized Purchaser’s failure to cure.

**14.6. Contractor’s Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless Authorized Purchaser expressly directs otherwise in the notice of termination. Upon termination of this Contract, Contractor shall immediately deliver to Authorized Purchaser all Products, documents, information, works-in-progress, and other property that are or would be deliverables had this Contract been completed. Upon Authorized Purchaser’s request, Contractor shall immediately provide to anyone Authorized Purchaser designates, all documents, research or objects and other tangible things required to complete delivery of the Products or performance of the Services.

**15. Contract Breach.** Before a party can be found in breach of this Contract, the other party shall first deliver a notice of default to the other party. The notice must describe the specific nature of the default, cite the specific provisions of this Contract that have been defaulted, indicate whether the default can be cured, and specify the time period in which the default must be cured, if cure is permitted.

**15.1. Default by Contractor.** Contractor violates or is in default of this Contract if:

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

**15.1.2.** Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor’s obligations under this Contract; or

**15.1.3.** Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State; or.

**15.1.4.** Contractor defaults any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the defaults within the period specified in Authorized Purchaser’s notice of default when Authorized Purchaser determines the default is curable by Contractor.

**15.2. Default by Authorized Purchaser.** Authorized Purchaser violates or is in default of this Contract if:

**15.2.1.** Authorized Purchaser fails to pay Contractor any amount as required under this Contract, and Authorized Purchaser does not cure such failure to pay within thirty (30) Calendar Days after delivery of Contractor’s notice of default or such longer period as Contractor may specify in such notice; or

**15.2.1.** Authorized Purchaser defaults any covenant, warranty, or obligation under this Contract and such default is not cured within thirty (30) Calendar Days after delivery of Contractor’s notice of breach or such longer period as Contractor may specify in such notice.

**16. Remedies for Default.**

**16.1.** If a Contract is terminated pursuant to section 14.2, 14.3, 14.4.1, 14.4.2, 14.4.3 or 14.5, Contractor’s sole remedy shall be a claim for the Products delivered and accepted and/or the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Authorized Purchaser, 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 Subsection, Contractor shall immediately pay any excess to Authorized Purchaser upon demand.

**16.2.** If a Contract is terminated pursuant to section 14.4.4, 14.4.5 or 14.4.6, Authorized Purchaser shall have any remedy available to it in law or equity, including, but not limited to: undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State (offsets or garnishment may be initiated after the Contractor has been given notice if required by law). If it is determined for any reason that Contractor was not in default under section 14.4.4 or 14.4.5, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 14.3.

**17. Compliance with Applicable Law.**

**17.1.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances, as may be adopted or modified from time to time and as applicable to this Contract and the Products and Services provided hereunder.

**17.2.** Authorized Purchaser’s performance under this Contract is conditioned upon Contractor’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

**18. Contractor’s Compliance with Tax Laws.**

**18.1.** Contractor shall, throughout the term of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, “tax laws” includes all the provisions described in subsection 10.1.10 of this Contract.

**18.2.** Any violation of subsection 18.1 of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty, in subsection 10.1.9 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle Authorized Purchaser to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

**18.2.1.** Termination of this Contract, in whole or in part;

**18.2.2.** Exercise of the right of setoff, or garnishment, if applicable, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s setoff right, without penalty; and

**18.2.3.** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Authorized Purchaser shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract.

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.

**19. Governing Law.** This Contract shall be governed by and construed according to with the internal laws of the State of Oregon without regard to principles of conflicts of law.

**20. Claim Venue and Consent to Jurisdiction**

**20.1. State Agency Venue and Consent to Jurisdiction.** Any claim, action, suit or proceeding (collectively, “Claim”) between DAS, Authorized Agency or any other agency or department of the State of Oregon that is an ORCPP Member, and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, that if a Claim must be brought in a federal forum, then it shall be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT(S).** In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim, or (ii) consent by the State of Oregon to the jurisdiction of any court.

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

**21. Insurance Requirements.** Contractor, at its sole cost, shall obtain and maintain the following minimum insurance coverages. Authorized Purchaser may request additional or other coverage, as Authorized Purchaser deems necessary.:

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

**21.2. Professional Liability**. Contractor shall provide Professional Liability insurance including the following:

A combined single limit of no less than $\_\_\_\_\_\_\_\_\_\_\_\_\_ per occurrence covering:

* Technology Errors and Omissions related to the professional services and products provided under this Contract ;
* Network Security/Privacy Breach of agency data i;
* Coverage for regulatory fines and fees imposed against Agency due to failures in products and Services provided under this Contract, including defense cost.

Coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability. Coverage must extend to business associates and independent contractors providing professional services on behalf of or at the direction of Contractor. A primary policy or combination of a primary policy and excess policy is acceptable in order to meet the limits requirement.

**21.3. Commercial General Liability.** Contractor shall provide Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance must include personal injury liability, products and completed operations, and contractual liability coverage , in each case arising out of Contractor’s negligence. Coverage must be written on an occurrence basis in an amount of not less than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per occurrence and $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ annual aggregate.

**21.4. Automobile Liability Insurance.** Contractor shall provide Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for bodily injury and property damage.

**21.5. Additional Insured.** The Professional Liability insurance and Commercial General Liability insurance required under this Contract must 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 this Contract.

**21.6. Tail Coverage.** If any of the required insurance is on a claims-made basis and does not include an extended reporting period of at least 24 (twenty-four) months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Contract, for a minimum of twenty-four (24) months following the later of (i) Contractor’s completion and Authorized Purchaser’s acceptance of all Services required under this Contract, or, (ii) The expiration of all Warranty Periods provided under this Contract.

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

**21.8. Notice of Change or Cancellation.** Contractor or its insurer must endeavor to provide at least thirty (30) Calendar Days’ written notice to Authorized Purchaser before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverages.

**21.9. Insurance Requirement Review.** Contractor agrees to periodic review of insurance requirements by Authorized Purchaser under this Contract and to meet updated requirements as mutually agreed upon by Contractor and Authorized Purchaser.

**22. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Contract and Contractor’s performance hereunder, according to Generally Accepted Accounting Principles. In addition, Contractor shall maintain all other records relating to this Contract in such a manner as to clearly document Contractor’s performance of its duties under this Contract. Contractor acknowledges and agrees that Authorized Purchaser and the Oregon Secretary of State’s Office, the Oregon Department of Revenue, the Oregon Department of Justice and their duly authorized representatives shall have access to such records and other books, documents, papers, plans and writings of Contractor relating to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all fiscal and other records relating to this Contract, including books, documents, papers, plans, and writings, for a minimum ofsix (6) years, or such longer period as may be required by applicable law, following final payment and termination or expiration of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**23. Intended Beneficiaries.** Authorized Purchaser and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. DAS is an intended beneficiary of the terms of this Contract.

**24. 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 related to this Contract.

**25. Force Majeure.** Neither Authorized Purchaser nor Contractor will be responsible for delay or default caused by fire, riot, acts of God, terrorism, war or any other like cause which is beyond the party’s reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Authorized Purchaser may terminate this Contract upon written notice to Contractor after it determines that such delay or default will likely prevent successful performance of this Contract.

**23. Survival.** All Contract terms, which by their context are intended to survive contract termination or expiration, shall survive, as well as sections 5, 6, 8, 9, 11, 12, 13, 16, 19, 28 and 29 of this Exhibit B.

**24. Time is of the Essence.** Contractor agrees that time is of the essence for delivering Services under this Contract.

**25. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Authorized Purchaser at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this section 25. Any communication or notice so addressed and mailed is effective five (5) Business Days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Authorized Purchaser, any notice transmitted by facsimile must be confirmed by telephone notice to Authorized Purchaser’s Contract Administrator. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.

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

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

**28. Amendment; Change Orders.**

**28.1. Amendments.** This Contract may be amended, modified, or supplemented only by a written amendment signed by Authorized Purchaser and Contractor. Any amendment that provides for additional Products or Services, goods or other services may only provide for Products or Services directly related to the scope of Products and Services in the Special Procurement, and no amendment will be effective until all requisite signatures and approvals are obtained.

**28.2. Change Control.** Either Authorized Purchaser or Contractor may request a change to this Contract, including all Exhibits hereto, by submitting a written proposal describing the desired change to the other party.

**28.2.1. Change Control Process.** Subject to the conditions above, modifications to time of performance, quantity, or deliverables in a Statement of Work and the related costs may be managed through an Authorized Purchaser-authorized change control process that reflects at least the processes described in this section. Either Authorized Purchaser or Contractor may request a change by submitting a written proposal describing the requested change to the other party.

Authorized Purchaser’s and Contractor’s Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

**28.2.2. Analysis of Change Requests; Change Orders.** The parties will analyze each change request (that has not been rejected) in accordance with the authorized change control process to determine the effect that the implementation of the change will have on the Products or Services and related costs. If the analyzed change request is mutually approved, the agreed-upon party will prepare a written change order, detailing all modifications to the Products or Services and related costs (the “Change Order”).

A Change Order at a minimum must contain:

* The effective date of the Change Order;
* A detailed description of the Products to be delivered or Services to be performed under the Change Order;
* The particular specification or matter in the Contract which will be altered, and the precise scope of that alteration;
* Whether the Change Order modifies critical path Deliverables;
* Any change in the cost of the Products to be delivered or Services to be performed pursuant to the Change Order; and
* The cumulative cost changes of all Change Orders previously issued.

**28.2.3. Limitation on Change Orders.** A Change Order may alter only time of performance, quantity, or deliverables in a Statement of Work and the related costs to which it expressly relates and must not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Products or Services described therein and incorporate the changes into this Contract.

**28.3. Payments.** No Products may be delivered nor Services performed pursuant to an Amendment or Change Order and no payment may be made on account of the Change Order until the Change Order is fully executed and all required State of Oregon approvals are received. Authorized Purchaser will pay for Products delivered or Services performed pursuant to an Amendment or Change Order according to the acceptance and payment procedures set forth in this Contract.

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

**30. Integration; Waiver.** This Contract, including incorporated exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change to the terms of this Contract shall bind either party unless in writing and signed by all parties and all approvals required by law have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Authorized Purchaser to enforce any provision of this Contract shall not constitute a waiver by Authorized Purchaser of that or any other provision.

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

**Exhibit B**

**to Master Agreement #\_\_\_\_\_**

**Description of Products and Services; Pricing**

**Services.**

**Products.**

**Pricing.**

**Contractor Key Persons and Key Person Rates.**

**Exhibit C-1**

**to Master Agreement #\_\_\_\_\_**

**Purchase Order Form**

**Exhibit C-2**

**to Master Agreement #\_\_\_\_\_**

**Work Order Contract Form**

**Work Order Contract #\_\_\_\_\_\_**

This Work Order Contract #\_\_\_\_\_\_\_ (“Work Order Contract” or “WOC”) is entered between the State of Oregon, acting through its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Authorized Purchaser”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Contractor”).

**I. Recitals**

**1.** Authorized Purchaser desires to engage Contractor to provide Products or Services or both to enable Authorized Purchaser to achieve specific business and governing entity mission objectives.

**2.** Contractor desires to perform Services for Authorized Purchaser.

**II. Agreement**

In consideration of the foregoing recitals and the mutual terms and conditions set forth below, Authorized Purchaser and Contractor agree as follows:

**1.** This WOC is entered pursuant to, and is subject to, the MSA.

**2. WOC Documents and Order of Precedence.** MSA Exhibit A, Contract Terms and Conditions and Exhibit No. 1, Statement of Work, are incorporated and apply to this WOC by reference. If a conflict, inconsistency or ambiguity arises in WOC interpretation, this WOC must be interpreted in the following order of precedence:

**2.1.** WOC less MSA Exhibit A;

**2.2.** MSA Exhibit A;

**2.3.** Exhibit No. 1, Statement of Work.

**3. Effective Date and Term.** This WOC is effective on the later of (i) \_\_\_\_\_\_, or (ii) the date that it has been executed by Authorized Purchaser and Contractor, and has been approved as required by applicable law (“Effective Date”). Unless terminated or extended, this WOC will expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. WOC expiration does not extinguish or prejudice Authorized Purchaser’s right to enforce this WOC with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

**4. Products and Services; Performance Metrics and Service Level Guarantees.** Contractor shall deliver the Products and perform the Services and deliver to Authorized Purchaser the deliverables (“Deliverables”) set forth in Exhibit No. 1, the Statement of Work (the “Statement of Work”). The Statement of Work includes the delivery and payment schedule for the Products, Deliverables and Services. Contractor shall deliver the Products and perform the Services according to the terms and conditions of this Work Order Contract. In its provision of the Products and Services, Contractor shall meet the performance metrics and service level guarantees set forth in Exhibit No. 1, Statement of Work. Contractor shall provide, maintain, and upgrade any hardware and related equipment, and software provided by Contractor and required for delivery and operation of the Products and Services.

**5. Compensation, Invoices and Payment Methodology.**

**5.1** The maximum not-to-exceed compensation payable to Contractor under this WOC, which includes allowable expenses is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_). Authorized Purchaser will not pay Contractor any amount in excess of the not-to-exceed compensation of this WOC and will not pay for Services performed before the Effective Date or after expiration or termination of this WOC. If the maximum compensation is increased by amendment of this WOC, the amendment must be fully effective before Contractor performs the Services subject to the amendment.

**5.2.** Contractor shall send all invoices to:

**5.3.** Authorized Purchaser shall pay Contractor for Services and Deliverables as set forth in Exhibit No. 1.

**5.4.** Authorized Purchaser will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement of Work or elsewhere in this Contract. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at: <http://www.oregon.gov/das/cfo/sars/policies/oam/40.10.00.pdf>

**6. WOC Authorized Representatives and Key Persons.** The following individuals are Authorized Representatives or Key Persons under this WOC:

**Authorized Purchaser: Contractor:**

Name: Name:

Title: Title:

Address: Address:

Phone: Phone:

Email: Email:

**7. Contractor Data.** As a condition precedent to the effectiveness of this Work Order Contract, Contractor shall provide all information requested below. Authorized Purchaser will report this information to the Internal Revenue Service (“IRS”) under the name and taxpayer identification number provided. (See IRS 1099 for additional instructions regarding taxpayer identification numbers.) Information not matching IRS records could subject Contractor to thirty-one percent (31%) backup withholding.

**Name (tax filing):**

**Address:**

**Citizenship:**  Non-resident alien Yes No

**Business Designation** (check one):

 Corporation Partnership Limited Liability Company

 Limited Liability Partnership Sole Proprietorship Limited Partnership

**Federal Tax ID#:**  **or Social Security No.**:

**(**These numbers are requested pursuant to ORS 305.385 and OAR 150-305.100.)

**8. Tax Certification.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual’s knowledge that: that for a period of at least six (6) years prior to the WOC Effective Date, Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Any violation shall entitle Authorized Purchaser to terminate this WOC, to pursue and recover any and all damages that arise from the breach and the termination of this WOC, and to pursue any or all of the remedies available under this WOC, at law, or in equity, including but not limited to:

* Termination of this WOC, in whole or in part;
* Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s setoff right, without penalty; and
* Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Authorized Purchaser shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this WOC, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Products or Services or replacement contractor or any of the above.

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.

**Authorized Signatures:**

**Contractor**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

[signature]

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

[print name]

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

**Authorized Purchaser**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 [signature]

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

[print name]

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

**Approved for legal sufficiency pursuant to ORS 291.047 and OAR 137-045-0030**

Oregon Department of Justice

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

 Assistant Attorney General

**Exhibit No. 1 to Work Order Contract**

**Statement of Work**

**Part I. General Information and Overview**

*(Insert an overview of the project plus the services, equipment and software to be provided under the WOC.)*

***Acceptance Process for Deliverables***:

*(Describe any other processes)*

***Assumptions***

***(****For Example:*

*Provide a list of all tasks and timelines.*

*Provide a list of all items that could cause Contractor work stoppage or delay.)*

**Part II. Tasks and Deliverables**

***A. Tasks and Deliverables***

*Insert a General Description of Services, to include:*

* + *Specific Tasks and Deliverables*
	+ *Acceptance criteria/plan(s), including coverage warranty*
	+ *Delivery requirements/schedule*

*(Add as many task and deliverables as necessary)*

**Task No. 1:**

*(insert description of task and deliverables)*

**Task No. 1 Deliverables:**

Deliverable 1.1:

Deliverable 1.2:

Deliverable 1.3:

Deliverable 1.4:

**Deliverable Schedule:**

|  |  |  |
| --- | --- | --- |
|  **No.** | **Deliverable Description** | **Due Date** |
| 1.1 |  | WOC Effective Date of + xx days |
| 1.2 |  | 5 days after end of preceding month |
| 1.3 |  | 10 days after end of preceding quarter |
| 1.4 |  | TBD |

***B. Responsibilies of Authorized Purchaser***

**(1)** Authorized Purchaser's obligations set forth in this WOC shall be performed by Authorized Purchaser in a timely and proper fashion in accordance with the Installation Schedule, or as otherwise agreed upon between the Parties, to allow Consultant to timely perform its obligations under this WOC.

**(2)** In addition, Authorized Purchaser shall also have the following additional obligations:

(*Please list Authorized Purchaser responsibilities)*

**Part III. Special Considerations**.

*(Include all special considerations)*

**Part IV. Payment Provisions**.

A. Payment Provisions

B. Authorized Purchaser shall pay Contractor upon review and approval of Contractor’s monthly invoice(s).

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

Unless otherwise agreed, Authorized Purchaser will not reimburse Contractor travel or other expenses, unless Authorized Purchaser has preapproved expenses and only pursuant to the Oregon Accounting Manual:

**Exhibit D**

**to Master Agreement #\_\_\_\_\_**

**DAS Volume Sales Report Template - Data Requirement, Format and Layout**