

EXHIBIT C to ITB for Innerspring Mattresses

TRADE SERVICES AGREEMENT

Innerspring Mattresses

PCS # _____

This Trade Services Agreement ("Contract") is entered into by the State Board of Higher Education acting by and through the University of Oregon ("University") and [NAME OF SERVICE PROVIDER] ("Contractor"). University and Contractor are each "Party" and collectively "Parties".

RECITALS

- A. University requires [describe deliverables], as further described in this Contract ("Deliverables").
- B. University has issued a formal solicitation seeking the Deliverables and Contractor has timely responded to the solicitation and been selected for Contract award.
- C. Contractor represents that it has the requisite skill, experience and qualifications to provide the Deliverables under this Contract and was the successful respondent to the informal solicitation.
- D. University and Contractor wish to enter into Contract for the Deliverables.

AGREEMENT

In consideration of the above Recitals, which are incorporated into this Contract, the mutual promises contained in this Contract and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Scope of Work.

Contractor will perform the services and provide the Deliverables described on **Exhibit A**, Scope of Work, which is incorporated by reference.

2. Invoicing and Payment.

Contractor will invoice University and University will pay Contractor in accordance with the invoicing instructions and payment terms included on **Exhibit B**, "Invoicing and Payment." The total compensation under this Contract, including any reimbursable expenses, will not exceed \$[TOTAL AMOUNT OF CONTRACT].

3. Term.

3.1 This Contract will commence on [START DATE] or on the date last signed, whichever is later ("Effective Date") and will terminate on [END DATE].

3.2 University may renew this Contract for two additional two-year terms. All of the terms and conditions of this Contract will apply to any renewal terms except fees and that the number of renewal term options exercised will be reduced by the number already exercised. Fees for each renewal term may increase by no more than three percent over the fees of the immediately preceding term.]

4. Insurance.

Contractor will secure at Contractor's expense and keep that insurance in effect during the term of this Contract either comprehensive general liability insurance with a broad form CGL endorsement or broad form commercial general liability insurance with a minimum combined single limit of not less than \$1,000,000 for each occurrence and (\$2,000,000 aggregate , covering bodily injury and property damage, and will include personal and advertising injury liability, products liability and contractual liability coverage for the indemnity provided under this Contract. Upon request by University, Contractor will secure at Contractor's own expense and keep in effect during the term of this Contract a Commercial Auto Liability insurance policy with a minimum combined single limit of \$1,000,000 per occurrence for each accident and \$2,000,000 aggregate. Any requested insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a minimum financial rating of an AM Best rating of A- or higher. All liability insurance will be arranged on an "occurrence" basis. No insurance will be allowed on a "claims made" basis.

If insurance is required by this Contract, upon request by University, Contractor must provide a Certificate of Insurance to University from the insuring company evidencing insurance coverage required by this Contract. The "Description of Operations" must include (using the following exact language) the "State Board of Higher Education acting by and through the University of Oregon, their officers and employees" as additional insured. Upon request, Contractor must also provide an endorsement to University from the insuring company, naming (using the following exact language) the "State Board of Higher Education acting by and through the University of Oregon, their officers and employees" as additional insured.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30-days' written notice from Contractor or its insurer(s) to University, Contracts Manager at the following address: 720 E. 13th Avenue, Suite 302, Eugene, OR 97401.

5. Notices.

Any notice under this Contract shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

University:

_____ (Department Head)
_____ (Department)

University of Oregon
_____ (Address)

Eugene, OR 97403

Fax: (541) 346-_____

With a copy to:

Purchasing and Contracting Services
720 E. 13th Ave., Suite 302
Eugene, OR 97401
Fax: (541) 346-2425

Contractor:

(Company Name)
Attention: _____ (Contact)

(Address)

(Address)
Fax: (###) ###-####

With a copy to:

(Company Name)
Attention: _____ (Contact)

(Address)

(Address)

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whoever received, shall always be effective.

6. Standard Terms and Conditions.

The Standard Terms and Conditions for Trade Services Agreement are attached as **Exhibit C**.

7. Attachments. All exhibits, attachments, addenda, and schedules which are referred to in this Agreement are incorporated in this Agreement.

[NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Parties have entered into this Contract.

UNIVERSITY

The State Board of Higher Education,
Acting by and through the University of Oregon

By: _____ Date: _____

Name: _____

Title: _____

CONTRACTOR

By (Sign) _____ Date: _____

Name (Print) _____

Title _____

**EXHIBIT A
TRADE SERVICES AGREEMENT
SCOPE OF WORK**

The following services are to be provided by the Contractor:

[Provide a detailed description of the Deliverables to be provided including any milestone dates, standards or guidelines to be met, etc.]

EXHIBIT B
TRADE SERVICES AGREEMENT
INVOICING AND PAYMENT SCHEDULE

INVOICING:

Contractor will submit invoices [basis for invoicing] or when all Deliverables are delivered to University. Invoice documents will clearly identify all Deliverables, the date the Deliverable were delivered to University. All expenses, if reimbursable, must be identified and itemized.

PAYMENT:

[Please insert a detailed statement of the dates and amounts for payments to be made and any service milestones or deliverables attendant to such payments..

EXHIBIT C
TRADE SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS:** (i) "Contract" means the entire written Trade Service Agreement, these Trade Service Agreement Standard Terms and Conditions, and any other terms and conditions and agreements referenced in the Contract. (ii) "ORS" means the Oregon Revised Statutes; "OAR" means Oregon Administrative Rule; "USC" means United States Code. (iii) "Deliverables" means goods and/or services provided to University by Contractor under this Contract. (iv) "University" means the State Board of Higher Education acting by and through the University of Oregon, making the purchase pursuant to this Contract, and means an ORCP member if the purchase is being made under the State of Oregon's cooperative purchasing program authorized by ORS 190.240. (v) "Contractor" means the party named in Contract with whom University has contracted for the purchase of goods or goods and services. (vii) University and Contractor are each a "Party" and collectively "Parties".

2. **ACCESS TO RECORDS.** Contractor will maintain records, sufficient to accurately document its performance of this Contract. University will have access to such records of Contractor for the purpose of determining compliance with this Contract. Contractor will retain all such records, for a minimum of six years following final payment under or termination of this Contract, or such longer period as may be required by applicable law or to conclude any audit, review, or controversy.

3. **INDEMNITY FOR INFRINGEMENT CLAIMS.** EXCEPT TO THE EXTENT ARISING FROM MATERIALS PROVIDED TO CONTRACTOR BY UNIVERSITY, WHICH MATERIALS ARE UTILIZED BY CONTRACTOR IN THEIR UNALTERED FORM AND WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION CLAUSE REFERENCED IN THE HOLD HARMLESS SECTION BELOW, CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE DELIVERABLES INFRINGE ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY. The indemnity under this Section will not apply to the extent such alleged or actual infringement arises as a result of (i) modifications of such work made by University which were not approved by Contractor, or (ii) Contractor's compliance with any of University's designs, specifications or instructions. In the event that a court of competent jurisdiction determines in a final, non-appealable order that the work is infringing in a manner for which Contractor is obligated to indemnify University pursuant to this Section, Contractor will, at its option, either (1) procure for University the right to continue using such infringing work; (2) replace the infringing work with a non-infringing item of like form, fit or function; or (3) modify the work so that it no longer infringes.

4. **HOLD HARMLESS.** Contractor will be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from any act or omission of Contractor, its subcontractors, agents, or employees. Contractor will indemnify and hold harmless University and its governing board and their directors, officers, agents,

employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the acts or omissions of Contractor or its subcontractors, officers, agents, or employees.

5. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Contractor is not to be considered an agent or employee of University for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that University provides for its employees. Nothing in this Contract will be construed to create a partnership, joint venture, franchise, agency, or employment relationship between the Parties.

6. OWNERSHIP OF WORK PRODUCT. All Deliverables that result from this Contract ("Work Product") are the exclusive property of University. University and Contractor intend that such Work Product be deemed "work made for hire" of which University will be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor irrevocably assigns to University all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor will execute such further documents and instruments as University may reasonably request in order to fully vest such rights in University. Contractor forever waives any and all rights relating to the Work Product, 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.

7. FEDERAL REQUIREMENTS. If this Contract is federally funded in whole or in part, Contractor must comply with all applicable provisions of OMB Circular A-110. Further, if this Contract is funded with American Recovery and Reinvestment Act (ARRA) funds or if Federal Funding Accountability and Transparency Act (FFATA) applies, Contractor is required to submit certain information to University. If Contractor fails to timely submit such required information, University reserves the right to cancel this Contract or, if work has been performed, withhold payment until such required submittals have been received.

8. EXCLUSIVITY. University is not bound by exclusivity provisions.

9. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants that (1) Contractor has the power and authority to enter into and perform this Contract; (2) The individual signing for Contractor is authorized to execute this Contract on behalf of Contractor; (3) This Contract, when executed and delivered, will be a valid and binding obligation of Contractor, enforceable in accordance with its terms; (4) The work under this Contract will be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (5) Contractor will, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the work; and (6) Contractor's name, as it appears in this Contract, is Contractor's legal name, as it will appear in the Contractor's W-9, and if Contractor is an entity rather than an individual, that the entity named in this Contract is validly existing and in good standing. Unless otherwise stated on the face of the Contract, all Deliverables will be new and current model and will carry full manufacturer warranties. Contractor warrants all Deliverables delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this Contract. All warranties will run to University. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

10. INSPECTIONS. Deliverables furnished under this Contract will be subject to inspection and test by University at times and place determined by University. If University finds Deliverables furnished to be incomplete or not in compliance with solicitation specifications, University may reject the Deliverables and require Contractor to either correct them without charge, or provide at a reduced price, at University's discretion. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by University, University may reject the Deliverables and cancel this Contract in whole or in part. Nothing in this paragraph will in any way affect or limit University's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

11. SUBCONTRACTS AND ASSIGNMENTS. Contractor will not subcontract, assign or transfer any of its interest in this Contract without obtaining prior written approval from University, which consent may be withheld by University in its sole discretion. As a condition to requesting prior written approval, Contractor must provide a written copy of any such proposed assignment or subcontract to University. University's consent to any assignment or subcontract will not relieve Contractor of any of its duties or obligations under this Contract. Any assignment or subcontract in contravention of this Section will be null and void.

12. SUCCESSORS IN INTEREST. This Contract will be binding upon and will inure to the benefit of the Parties, and their respective successors and assigns.

13. TERMINATION. (a) This Contract may be terminated at any time by mutual written consent of both Parties. (b) University may at its sole discretion terminate this Contract in whole or in part upon 30-days' written notice to Contractor. (c) University may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by University: (i) federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that any Deliverables or services to be provided by Contractor under this Contract are no longer allowable or appropriate for purchase by University or are no longer eligible for the funding proposed for payment authorized by this Contract; (ii) any license or certificate required by law or regulation to be held by Contractor to provide Deliverables under this Contract is denied, revoked, or not renewed for any reason; (iii) if Contractor becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by Contractor; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably to Contractor within ninety (90) calendar days. (d) University may terminate this Contract for default (including breach of contract) if (i) Contractor fails to provide Deliverables called for by this Contract within the time specified in this Contract or any extension of this Contract; or (ii) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from University, fails to correct such failures within ten business days. (e) Contractor may terminate this Contract upon 30-days' written notice to University if University fails to pay Contractor pursuant to the terms of this Contract and University does not cure such failure to pay within 30-business days after receipt of Contractor's written notice, or such longer period as Contractor may specify.

14. TERMINATION DUE TO NONAPPROPRIATION OF FUNDS. University may terminate this Contract upon written notice to Contractor if University has not: (a) Received from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority, or (b) Received allotments pursuant ORS Chapter 291 sufficient to allow University, in the exercise of its reasonable administrative discretion, to pay the amounts of this Contract.

15. REMEDIES. (a) In the event of termination pursuant to Section 13(b), (c)(i) and 14, Contractor's sole remedy will be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by University, less previous amounts paid and any claim(s) which University has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor will pay any excess to University upon demand. (b) In the event of termination pursuant to Sections 13(c)(ii) or (d), University will have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under these subsections, the rights and obligations of the Parties will be the same as if the Contract was terminated pursuant to Section 13(b). (c) Upon receiving a notice of termination of this Contract, Contractor will immediately cease all activities under this Contract, unless University expressly directs otherwise in writing. Upon termination of this Contract, Contractor will deliver to University all Work Product, documents, information, works-in-progress and other materials that are or would be Deliverables or otherwise the property of University had the Contract been completed. Upon University's request, Contractor will surrender to anyone University designates, all documents, research or objects or other tangible things needed to complete the work.

16. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner with or prohibit Contractor's full performance of this Contract. Contractor also covenants that in the performance of this Contract no person having any such interest will be employed. Contractor further covenants that its performance of this Contract will not cause any employee or volunteer of University to violate ORS Chapter 244.

17. NON-RESIDENT FOREIGN CONTRACTORS. For non-resident foreign Contractors with U.S. sourced income, University will withhold Federal Tax at the applicable tax rate from Contractor's fee unless Contractor is eligible for tax treaty benefits, or qualifies for exemption under other areas of the tax code. Contractor must provide a completed and signed US Internal Revenue Service (IRS) Form to claim tax treaty benefits (8233 or appropriate W8 form). Contractor must have a U.S. reporting Identification Number, a Social Security Number (SSN), IRS Tax Identification Number (ITIN), or Employer Identification Number (EIN) to be eligible for tax treaty benefits. If applicable, Contractor will enter the US in a legal status allowing Contractor to work for University as evidenced by the US Citizenship and Immigration Services (USCIS) I-94 stamped or attached to Contractor's passport or this Contract is void.

18. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way affect the meaning or interpretation of this Contract.

19. COMPLIANCE WITH APPLICABLE LAW. Contractor will comply with all applicable federal, state, county, and local laws, ordinances, and regulations. Without limiting the prior sentence, Contractor also agrees to comply with all applicable laws prohibiting discrimination

on the basis of race, sex, national origin, religion, age, sexual orientation, status as a veteran, or handicap.

20. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT. Contractor agrees to protect the confidentiality of student information and to comply with the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations, specifically 20 U.S.C. 1232G, 34 C.F.R. § 99.33, ORS 351.070 and OAR 571-020, with respect to any redisclosure of personally identifiable information from education records obtained from the University.

21. GOVERNING LAW; JURISDICTION; VENUE. This Contract will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between University and Contractor will be brought and conducted solely and exclusively within a Circuit Court for the State of Oregon. However, if any claim, action, or suit must be brought in a federal forum, it will be brought and conducted exclusively in the United States District Court for the District of Oregon. In no event will any part of this Contract be construed as a waiver by University of its sovereign and governmental immunities. BY EXECUTION OF THIS CONTRACT, CONTRACTOR CONSENTS TO IN PERSONAM JURISDICTION OF SUCH COURTS.

22. RECYCLED PRODUCTS. Unless expressly otherwise provided for in contract, all paper products will be sourced from mills using elemental chlorine-free processes and contain a minimum of 30% post-consumer waste.

23. MATERIAL SAFETY DATA SHEET. In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, Contractor will provide University with a Material Safety Data Sheet for any Deliverables provided under this Contract which may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag, or mark such Deliverables.

24. SURVIVAL. All provisions of this Contract that would reasonably be expected to survive the termination of this Contract will do so.

25. SEVERABILITY. If any term or provision 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 and provisions will not be affected. The Parties agree to attempt to substitute for any illegal or unenforceable provision a valid or enforceable one that achieves the economic, legal and commercial objectives of the illegal and unenforceable provision to the greatest extent possible.

26. ECONOMIC OPPORTUNITIES. Contractor will, when applicable, have made good faith efforts to work with or obtain materials to be used in performing the Contract from minority-owned, women-owned, and emerging small business enterprises.

27. DUAL PAYMENT. Contractor will not be compensated by any other party for work performed under this Contract.

28. NO THIRD PARTY BENEFICIARIES. University 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 any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name and

expressly described in this Contract as intended beneficiaries.

29. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

30. PAYMENT. Unless a different payment date is specified in this Contract, payment for goods and services under the Contract will be made within 45 days following the date the entire order is delivered, services complete, if applicable, or the date the invoice is received, whichever is later. Payment of overdue account charges by University will be subject to OAR 580-061-0050.

31. FOREIGN CONTRACTOR. If Contractor is not domiciled or registered to do business in the State of Oregon, Contractor will promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Contract. Contractor will demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

32. FORCE MAJEURE. Neither University nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, University or Contractor's reasonable control. Contractor will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligation under this Contract.

33. WAIVER. The failure of University to enforce any provision of this Contract will not constitute a waiver by University of that or any other provision.

34. COMMUNICATIONS STANDARDS AND GRAMMAR AND STYLE GUIDELINES. Contractor will conform to all applicable University Communications Standards and University Grammar and Style Guidelines available at (http://des.uoregon.edu/cp_grammar.html).

35. SUCCESSORS IN INTEREST. This Contract will be binding upon and will inure to the benefit of the Parties, and their respective successors and assigns.

36. SMOKE AND TOBACCO FREE CAMPUS. Contractor acknowledges and agrees University's grounds and premises are smoke and tobacco free. Contractor and Contractor's employees, agents and subcontractors, if any, agree not to smoke or use tobacco products while on University property.

37. EXECUTION AND COUNTERPARTS. This Contract may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Contract), each of which will be considered an original and all of which together will constitute one and the same Contract. At the request of a Party, the other Party will confirm facsimile or electronically transmitted signature by delivering the Contract with an original signature to the requesting Party.

38. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED IN THIS CONTRACT

REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE TO THIS CONTRACT OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.