

## AGREEMENT

This Agreement ("Agreement" or "Contract") is entered into by and between the State Board of Higher Education acting by and through the University of Oregon ("University"), and \_\_\_\_\_ (Name of Company) \_\_\_\_\_, a \_\_\_\_\_ (Name of State) \_\_\_\_\_ Corporation with its principal place of business at \_\_\_\_\_ (Address) \_\_\_\_\_ ("Contractor") (each a "Party;" collectively, the "Parties").

## RECITALS

A. University desires to acquire a \_\_\_\_\_ (Type of Equipment) \_\_\_\_\_ ("Equipment") and associated hardware and software ("\_\_\_\_\_ (Name of Equipment) \_\_\_\_\_") and related services.

B. Contractor has extensive experience and expertise in \_\_\_\_\_ (Type of Equipment) \_\_\_\_\_ and is in the business of providing the same and associated hardware and services.

C. University has issued a solicitation letter seeking a MRI system and associated hardware, software, and services, and Contractor has responded to the letter.

D. University and Contractor wish to enter into an Agreement whereby Contractor sells to University a MRI system and associated hardware and services.

## AGREEMENT

In consideration of the promises below, the parties agree as follows:

### 1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

1.1 "Deliverables" shall mean the Equipment and any accessories, software, content, designs, developments, processes, know-how, or other materials required for the operation of the Equipment, including Licensed Deliverables, all as more fully described in **Exhibit A**. The Deliverables shall comply with the technical specifications set forth in **Exhibit B**. In the event of a conflict between the description set forth on Exhibit A and the Technical Specifications or **Exhibit B**, **Exhibit B** will control.

1.2 "Licensed Deliverables" shall mean any software, specifications, content, designs, developments, processes, know-how, or other materials included within the Deliverables that are identified as Licensed Deliverables in **Exhibit A**.

### 2. Shipment.

2.1 Contractor shall ship the Equipment to University FOB Destination. Risk of loss of the Deliverables shall pass to University upon unloading at University premises. Contractor will arrange for and assume all charges related to shipment of the Deliverables.

2.2 Contractor will ship the Equipment to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Installation of Deliverables.

3.1 Contractor shall procure and deliver the Deliverables and shall install and integrate the Deliverables on the designated University premises. Contractor shall furnish all labor, equipment, and materials necessary for the installation of the Deliverables; provided, however, that University shall be responsible for any integration of the Deliverables with any of University's existing equipment which does not constitute Deliverables, unless otherwise specified in this Agreement.

3.2 Contractor shall begin performance of the work required under this Agreement upon execution of this Agreement and shall use its commercially reasonable efforts to complete the work and deliver the Deliverables to University and fully and completely install it on or before \_\_\_\_\_, 2012. In no event shall the installation of the Deliverables be completed by Contractor later than \_\_\_\_\_, 2012. To ensure effective communication, Contractor designates \_\_\_\_\_ as contractor's Project Manager and Contractor's primary point of contact for this Agreement. University designates \_\_\_\_\_ as University's primary point of contact in connection with this Agreement. Contractor shall coordinate exact times and dates for Deliverables delivery, installation and training with University designated primary contact.

3.3 All work performed under this Agreement, whether furnished by Contractor or by Contractor's subcontractors, shall be subject to inspection, examination, and testing by University or its authorized representative at any reasonable time or times during performance of this Agreement. Inspection, examination, or testing by University shall neither relieve Contractor of its responsibility to furnish the Deliverables in accordance with this Agreement nor invalidate any subsequent claim that University may have because of defective or unsatisfactory work.

3.4 University may request changes to the specifications for the Deliverables by providing a written request to Contractor thirty days prior to shipment. If Contractor believes a change requested by University will increase Contractor's costs under this Agreement or will result in an a delay past the completion date under Section 3.2, Contractor, prior to performing the change, shall promptly notify University of Contractor's proposed charge and/or proposed time extension to implement the change. Contractor's proposed charge shall not exceed an amount reasonably calculated to compensate Contractor for any increase in Contractor's costs arising from the change. If Contractor proposes such a charge, the Parties shall execute a written amendment amending this Agreement to reflect the charge and/or time extension prior to Contractor performing the change. Contractor will use commercially reasonable efforts to accept all changes requested by University provided that such changes are within the general scope of the services contemplated by this Agreement. NO CHANGE SHALL BE BINDING UPON UNIVERSITY UNLESS AND UNTIL AN AMENDMENT IS EXECUTED BY AUTHORIZED REPRESENTATIVES OF UNIVERSITY AND CONTRACTOR, WHICH

AMENDMENT STATES SPECIFICALLY THAT IT CONSTITUTES AN AMENDMENT TO THIS AGREEMENT. THE ISSUANCE OF APPROVALS, INFORMATION OR INSTRUCTIONS BY UNIVERSITY PERSONNEL SHALL NOT CONSTITUTE AN AUTHORIZED CHANGE.

3.5 University shall respond promptly to reasonable requests from Contractor for information and approvals to the extent necessary to enable Contractor to perform the work required under this Agreement.

#### 4. Acceptance of Deliverables.

4.1 Contractor shall provide written notice to University upon full and complete installation of the Deliverables. Within fifteen (15) calendar days after receipt of such notice, University shall perform tests to determine whether the Deliverables meets the specifications and performance standards set forth in this Agreement. University agrees that its acceptance criteria shall be limited to the specifications or performance standards set forth in **Exhibit A** and **Exhibit B**.

4.2 University shall provide written notice to Contractor of the results of such testing and whether or not the Deliverables performs in accordance with the specifications or performance standards set out in **Exhibits A** and **B**, within fifteen (15) calendar days after University completes the testing described in section 4.1. At such time as University notifies Contractor under this Section 4 of its determination that the Deliverables performs in accordance with the specifications or performance standards set out in **Exhibits A** and **B**, the date of such notice shall be the date of "Final Acceptance."

4.3 If the Deliverables does not perform as required by this Agreement, University shall provide written notice of non-acceptance to Contractor within fifteen (15) calendar days after University completes the testing described in section 4.1. Upon receipt of such notice of non-acceptance, Contractor shall, within a fifteen (15) calendar day period, replace, modify, or improve the Deliverables at Contractor's sole expense to ensure that the Deliverables performs as required under this Agreement.

4.4 After such replacement, modification, or improvement, University shall conduct new acceptance tests within a fifteen (15) calendar day period and provide written notice to Contractor of the results of such testing within seven (7 ) calendar days after the fifteen (15) calendar day testing period. Failure of the Deliverables to materially meet the specifications and performance standards after the second set of acceptance tests shall constitute a default by Contractor, unless such failure is due to the negligence or intentional misconduct of University. Upon such default, University may require Contractor to remove the Deliverables at Contractor's sole expense and require Contractor to refund to University all amounts paid by University under this Agreement. University and Contractor may also negotiate any other resolution mutually acceptable to the Parties.

4.5 Upon delivery of the Deliverables to University, Contractor agrees that University shall have a license to use all Licensed Deliverables for the purpose of evaluating and testing the Deliverables. Upon Final Acceptance of the Deliverables by University, Contractor agrees that the Licensed Deliverables shall be licensed to University on the terms set forth in **Exhibit A** for each Licensed Deliverable.

5. Training. During installation of the Deliverables under Section 3, Contractor shall provide training to University personnel for the operation of the Deliverables.

6. Maintenance and Support. After Final Acceptance, Contractor shall maintain the Deliverables and provide University with warranty support as described in Section 10 and Exhibit C incorporated herein.

7. Compensation.

7.1 For all deliverables and services performed by Contractor hereunder, University agrees to pay to Contractor the sum of \_\_\_\_\_ payable as follows:

7.1.1 Upon execution of this Agreement, Contractor may invoice University for 20% of the total purchase price in the amount of \$\_\_\_\_\_.

7.1.2 Upon delivery of all Deliverables, Contractor may invoice University for 30% of the total purchase price, in the amount of \$\_\_\_\_\_.

7.1.3 Upon complete installation of all Deliverables and demonstration of specifications, Contractor may invoice University for 30% of the total purchase price, in the amount of \$\_\_\_\_\_.

7.1.4 Upon receipt of a signed report of Final Acceptance by the University for all Deliverables, Contractor may invoice University for 20% of the total purchase price, in the amount of \$\_\_\_\_\_.

7.1.5 University shall pay invoices within thirty (30) calendar days of receipt.

7.2 Notwithstanding the above, the University shall pay Contractor on a time and materials basis for any change orders to the Equipment mutually agreed upon in writing by the Parties.

7.3 All payments to Contractor shall be subject to ORS 293.462.

7.4 Billing Address.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7.5 Invoice Requirements. In connection with the services and Deliverables under this Agreement, Contractor will invoice University upon full execution of this Agreement and again upon full acceptance of Deliverables ("Invoice Period"). Contractor's invoices will provide detailed listing of all Work performed, including all personnel performing the Work, dates of performance, work elements/tasks performed and associated hours. Contractor will include with its detailed invoice a progress report that documents in bulleted detail the Work completed and accepted during the Invoice Period, milestones reached or percent of milestones complete; cumulative number of hours completed for each milestone and number

of estimated hours remaining to complete each milestone; schedule delays caused by University, negotiated schedule adjustments, problems/issues/concerns/recommended adjustments; and work plan for the next Invoice Period. Contractor will provide University with such other information as University may reasonably request.

## 8. Ownership.

8.1 With the exception of the Licensed Deliverables, which shall be licensed to University as provided in Section 8.2, all Deliverables delivered to University hereunder shall become the sole and exclusive property of University, and Contractor hereby assigns all right, title and interest in such Deliverables to University upon delivery to University's facilities.

8.2 Contractor shall retain ownership of Licensed Deliverables. Contractor hereby grants University a perpetual, non-exclusive, non-transferable world-wide license to use each Licensed Deliverable to the extent required for University to use and maintain the Deliverables in its capacity as an end-user. The License grant shall survive the termination of this Agreement.

## 9. Term and Termination.

9.1 This Agreement shall commence upon the date it is executed by the last person below, and unless earlier terminated pursuant hereto, shall extend until Contractor has received full payment for the Deliverables by University and all services Contractor has agreed to provide have been performed.

9.2 Either party may terminate this Agreement upon material breach of the Agreement by the other party and failure by such party to cure the breach within 30 calendar days after written notice from the non-breaching party specifying the breach.

9.3 University may terminate this Agreement immediately upon written notice in the event that: (a) 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 Agreement are no longer allowable or appropriate for purchase by University or are no longer eligible for the funding proposed for payment authorized by this Agreement; (b) University fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay Contractor for the services provided hereunder; (c) any license or certificate required by law or regulation to be held by Contractor to provide services under this Agreement is denied, revoked, or not renewed for any reason; (d) 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; (e) 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 (f) 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. In the event of termination pursuant to this Section 9.3, University shall pay Contractor an equitable portion of the payments required under Section 7 for services actually performed by Contractor and Deliverables actually provided to University, but University shall have no further payment obligation to Contractor under this Agreement.

9.4 University may terminate this Agreement for convenience upon thirty (30) calendar day's written notice prior to shipment. Upon termination for convenience by University, University shall pay Contractor an equitable portion of the payments required under Section 7 for services actually performed by Contractor and Deliverables actually provided to University, but University shall have no further payment obligation to Contractor under this Agreement.

9.5 Except as expressly provided in this Agreement, termination of this Agreement by University in accordance with this Agreement shall be without any penalty, obligation for future payments, damages, or liability whatsoever against the Oregon University System, the University, or any of their officers, agents, or employees. In no event shall termination of this Agreement entitle Contractor to recover anticipated profits on work not performed.

## 10. Representations and Warranties of Contractor.

10.1 Contractor represents and warrants that the services to be performed by Contractor pursuant to this Agreement shall be performed in a timely and professional manner by qualified personnel familiar with the installation of systems comparable to the Deliverables.

10.2 Contractor represents that operation and use of the Deliverables, the Deliverables and the Licensed Deliverables by University as contemplated by this Agreement will, to Contractor's knowledge, not infringe the patent, copyright, or other intellectual property rights of any third party.

10.3 Contractor represents that Contractor has the power and authority to enter into and perform this Agreement; that the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of Contractor; that this Agreement has been duly executed and delivered by Contractor and constitutes a valid, binding and enforceable obligation of Contractor except as the provisions of this Agreement may be rendered unenforceable by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws effecting creditor's rights generally or the application of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law); and that Contractor's name, as it appears in this Agreement, 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 Agreement is validly existing and in good standing.

10.4 Contractor warrants that the individual items comprising the Deliverables shall be free from all defects in material and workmanship and will conform to the applicable specifications set forth on **Exhibits A** and **B** under normal use and service and when correctly maintained for the warranty periods set forth on **Exhibit C** (the "Warranty Periods") with respect to each such item (the "Warranty"). Contractor shall repair or replace, at Contractor's sole option, any defective or nonconforming individual item comprising the Deliverables covered under the foregoing Warranty provided University notifies Contractor in writing promptly after discovery of the defect or nonconformity and within the applicable Warranty Period. Contractor will pay expenses for travel by Contractor's personnel to University's facilities if necessary for warranty repair during the Warranty period. Such defective or nonconforming item may be returned to Contractor's facility for warranty repair at Contractor's discretion if reasonably necessary to effect such repair. If returned to the Contractor's facility for repairs with Contractor's prior authorization, and provided the defect or non-conformance is

covered under Warranty, Contractor shall pay costs of shipping to Contractor's Facility and then back to University. For items comprising the Deliverables returned for repair that are not covered under Warranty, Contractor's standard repair charges shall be applicable in addition to all shipping expenses. The Warranty shall be null and void (i) upon any modification, alteration of the Deliverables by any person or entity other than Contractor except for modifications to ensure system security as described under **Exhibit C**, maintenance and basic troubleshooting by University personnel or (ii) if the Deliverables is subjected to unusual physical, thermal or electrical stress, misuse, abuse, accident or negligence in use, storage or tampering.

10.6 In the event that the Deliverables is substantially inoperative for more than thirty (30) calendar days during the initial one year warranty period described in this Section 10, and such is not the fault of the University, the warranty period shall be extended, at no additional cost, by the number of calendar days that the Deliverables has been substantially inoperative.

10.7 The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

## 11. Insurance.

11.1 Insurance. Contractor shall secure at Contractor's own expense and keep in effect during the term of this Agreement either comprehensive general liability insurance with a broad form CGL endorsement or broad form commercial general liability insurance, covering bodily injury and property damage, with a minimum limit of \$1,000,000 per occurrence with an aggregate amount of \$2,000,000, which shall include personal and advertising injury liability and products.

11.2 Contractor shall secure at Contractor's own expense and keep in effect during the term of this Agreement a Commercial Auto Liability insurance policy with a minimum limit of \$1,000,000 per occurrence with an aggregate amount of \$2,000,000.

11.3 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. Self-insured retentions may be acceptable in lieu of the above requirements. Any self-insured retentions must be declared to and approved by the University. University may require Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

11.4 Before the Agreement is executed by University, Contractor must provide to University a Certificate of Insurance from the insuring company evidencing insurance coverages required by this Agreement. The "Description of Operations" must include (using the following exact language) the "**State Board of Higher Education acting on behalf of the University of Oregon, their officers and employees**" as additional insured. The certificate shall provide that the insurance company will give a 30-day written notice to the University if the insurance is cancelled or materially changed.

11.5 Upon request by University, Contractor will provide to University an endorsement from the insuring company, naming (using the following exact language) the "**State Board of**

**Higher Education, acting on behalf of the University of Oregon, their officers and employees” as additional insured.**

12. INDEMNIFICATION.

12.1 GENERAL INDEMNITY. 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.

12.2 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 HARMELSS 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, nonappealable 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.

13. Confidentiality.

13.1 As used in this Section, the term "Confidential Information" means proprietary or other nonpublic information or any information intended by University to be kept confidential which is disclosed by University to Contractor in the course of Contractor's performance of its obligations under this Agreement.

13.2 Contractor agrees that it will not disclose Confidential Information at any time without University's written consent.

13.3 Contractor agrees that it will use Confidential Information only in performing services for University under this Agreement.

13.4 The confidentiality obligations imposed by this Section 13 shall not apply to: (a) information that now is or hereafter becomes part of the public domain through lawful means; (b) information developed by Contractor outside the scope of this Agreement; and (c)



information subsequently and rightfully received by Contractor from third parties that does not relate to Contractor's performance under this Agreement.

13.5 Contractor hereby acknowledges that any records it discloses to University are subject to the Oregon Public Records laws.

14. Assignment; Delegation.

14.1 This Agreement may not be assigned by Contractor without the prior written consent of University, which shall not be unreasonably withheld. Notwithstanding the generality of the foregoing, Contractor shall not assign any of its rights hereunder, nor delegate or subcontract any of its duties hereunder to any third party, including but not limited to any subcontractor, without the prior written consent of University. Except as otherwise provided in this Agreement, this Agreement shall be binding upon each party's respective successors and lawful assigns. University's consent to any delegation or subcontracting of Contractor's duties hereunder shall not relieve or excuse Contractor of any of its duties or obligations under this Agreement.

14.2 Notwithstanding the generality of the previous subsection, if Contractor intends to delegate one or more duties hereunder to a subcontractor, Contractor shall first furnish to University information to University's satisfaction as to the experience and competence of such subcontractors.

15. Independent Contractor.

15.1 Contractor and University are contractors independent of each other, and nothing in this Agreement shall be construed as creating a partnership, joint venture, franchise, agency, or employment relationship between the Parties. Contractor acknowledges and agrees that Contractor is not an "officer," "employee," or "agent" of University (or any other institution of the Oregon University System), as those terms are used in ORS 30.265, and further agrees that it shall not make representations to third parties to the contrary. Neither party shall have the authority to make any statements, representations, nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound. Although University reserves the right to monitor and evaluate the quality of the performance of Contractor's duties hereunder, University shall not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner for performing services hereunder.

15.2 Contractor hereby acknowledges that Contractor's employees shall have no right to participate in University's employee benefit plans or to receive statutory employment benefits from University. Contractor acknowledges that University is not responsible for the tax or other withholding of any employee of Contractor, and that no employee, agent, or contractor of Contractor is covered by University's disability insurance, worker's compensation insurance, or other such insurance. Contractor agrees that it shall carry its own such insurance and withhold any relevant taxes with regard to Contractor's employees. Contractor agrees to indemnify and hold University harmless from and against any and all claims, demands, damages, actions, suits, penalties, liabilities, and losses of any kind or character

(including reasonable attorneys' fees) arising out of or connected in any way with its failure to pay such taxes or carry such insurance.

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

17. Miscellaneous.

17.1 Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given under this Agreement be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or University at the address or number set forth below in this Section, or to such other addresses or numbers as the Parties may from time to time direct in writing. Any communication or notice so addressed and mailed will be deemed to be given five days after mailing. Any communication or notice delivered by facsimile will be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against University, such facsimile transmission must be confirmed by telephone notice to University's supervising representative. Any communication or notice by personal delivery will be deemed to be given when actually delivered. Actual notice, however and from whoever received, shall always be effective.

University:

\_\_\_\_\_ (Department Head)  
\_\_\_\_\_ (Department)

University of Oregon  
\_\_\_\_\_ (Address)

Eugene, OR 97403  
Fax: (541) 346-\_\_\_\_\_

With a copy to:

Contracts Manager  
720 E. 13<sup>th</sup> Ave., Suite 302  
Eugene, OR 97401  
Fax: (541) 346-2425

CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

With a copy to:

\_\_\_\_\_

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17.2 Applicable Law; Jurisdiction And Venue. This Agreement 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 Agreement be construed as a waiver by University of its sovereign and governmental immunities. BY EXECUTION OF THIS AGREEMENT, CONTRACTOR CONSENTS TO IN PERSONAM JURISDICTION OF SUCH COURTS.

17.3 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF THE PARTIES WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN AGREEMENT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE AN ORIGINAL COUNTERPART OF THIS SECTION WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

17.4 Non-Oregon Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement, provided such information is not confidential or proprietary to Contractor. As requested by University, Contractor shall demonstrate its legal capacity to perform its duties under this Agreement in the State of Oregon prior to entering into this Agreement.

17.5 Approvals. The approval of the University General Counsel office is required before any work may begin under this Agreement.

17.6 Non-Use of Names and Trademarks. No Party shall, without express written consent in each case, use any name, trade name, trademark, or other designation of any other Party (including contraction, abbreviation or simulation) in advertising, publicity, promotional, or any other activities or context.

17.7 Funds Available and Authorized Payments. Contractor understands and agrees that Contractor's receipt of payment under this Agreement attributable to services performed under this Agreement after the last day of the current biennium is contingent upon University

receiving from the Oregon Legislative Assembly (including but limited to its Emergency Board) appropriations, limitations, or other expenditure authority sufficient to allow University, in the exercise of its reasonable administrative discretion, to continue the compensation of Contractor under this Agreement. University shall not be liable to Contractor under this Agreement for work Contractor performs under any other agreement, or for any other institution of the Oregon University System. University shall only pay for completed work that has been accepted by University pursuant to this Agreement.

17.8 Compliance with Applicable Law. Contractor will comply with all applicable federal, state, county, and local laws, ordinances, and regulations. 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.

17.9 Federal Tax Identification Number. Contractor shall provide its federal tax identification number to University upon the execution of this Agreement. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Federal tax identification numbers provided pursuant to this authority shall be used for the administration of state, federal, and local tax laws.

17.10. Time is of the Essence. Contractor Agrees that time is of the essence under this Agreement.

17.11 No Third Party Beneficiaries. University and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall 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 herein and expressly described herein as intended beneficiaries.

17.12 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 Agreement.

17.13 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected. 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.

17.14 Workers' Compensation. If Contractor employs one or more subject workers in Oregon or if any employee of Contractor temporarily performs work in Oregon, Contractor shall comply with the workers' compensation laws of Oregon, specifically ORS 656.017, which requires employers to provide workers' compensation coverage for all their subject workers. Out-of-state employers must comply with ORS 656.126.

17.15 Captions. The captions or headings in this Agreement are for convenience only and in no way affect the meaning or interpretation of this Agreement.

17.16 Survival. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

17.17 OMB Circular A-110. If this Agreement is federally funded in whole or in part Contractor must comply with all applicable provisions of OMB Circular A-110.

17.18 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 Agreement is void. If Contractor is not domiciled in 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 Agreement. Contractor will demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Agreement.

17.19 Recycled Products. Contractor will use recyclable products, as defined in ORS 279A.010(1)(ii) to the maximum extent economically feasible in the performance of the Work set forth in this Agreement. Unless expressly otherwise provided for in this Agreement, Contractor will source all paper products from mills using elemental chlorine-free processes and contain a minimum of 30% post-consumer waste.

17.20 Economic Opportunities. Contractor will, when applicable, have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the Agreement from minority, women, or emerging small business enterprises.

17.21 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.

17.22 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 Agreement. Contractor also covenants that in the performance of this Agreement no person having any such interest will be employed. Contractor further covenants that its performance of this Agreement will not cause any employee or volunteer of University to violate ORS Chapter 244.

17.23 Time is of the Essence. In all instances where Contractor is required by the terms and provisions of this Agreement to do any act at a particular time or within an indicated period, it is understood and agreed that time is of the essence.

17.24 Hazard Communication. Contractor will notify University prior to using products containing hazardous chemicals to which University employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon University's request, Contractor will immediately provide Material Safety Data Sheets, as required by OAR Chapter 437, for the products subject to this provision.

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

17.26 Dual Payment. Contractor will not be compensated by any other party for work performed under this Agreement.

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

17.28 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](http://des.uoregon.edu/cp_grammar.html)).

17.29 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Deliverables and be binding upon the parties.

17.30 Entire Agreement; No Waiver. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and merges all prior and contemporaneous communications with respect to such subject matter. This Agreement shall not be modified except by a signed writing dated subsequent to the date of this Agreement and signed on behalf of Contractor and University by their respective duly authorized representatives. No waiver, consent, modification, or change of any term of this Agreement shall bind either Party unless the same is in writing and signed by both Parties and all necessary approvals have been obtained. Such express waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing. The failure of University to enforce any provision of this Agreement shall not constitute a waiver by University of that or any other provision. The Parties hereby acknowledge and agree that this Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to future enforcement of that or any other provision.

**[NEXT PAGE IS THE SIGNATURE PAGE]**

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

UNIVERSITY

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date \_\_\_\_\_

CONTRACTOR

By (Sign) \_\_\_\_\_  
Name (Print) \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## **Exhibit A**

The Deliverables consist of:



## **Exhibit B- Specifications**

**Exhibit C--Maintenance and Support (1 page)**