

EXHIBIT B
AP FOR FLUORESCENCE ACTIVATED CELL SORTER (FACS)
PCS# 600000-0579-AP

EQUIPMENT PURCHASE AGREEMENT
PCS# _____

This Equipment Purchase 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 and Contractor wish to enter into an Agreement whereby Contractor sells to University a _____ (Type of Equipment) _____ and associated hardware and services.

AGREEMENT

In consideration of the above Recitals, which are incorporated into this Agreement, the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, 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. In the event of a conflict, Exhibit B sets the minimum requirements and the specification delivering the greater benefit to University will control.

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

2. Shipment.

2.1 Contractor shall ship the Deliverables 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 Deliverables to the following address:

3. [Assembly or Installation] of Deliverables.

3.1 Contractor shall procure, install, and integrate the Deliverables and shall deliver the Deliverables to University and complete the [assembly or installation] on University premises. Contractor shall furnish all labor, equipment, and materials necessary for the installation of the Deliverables]; provided, however, that University shall be solely responsible for any integration of the Deliverables with any of University's existing equipment which does not constitute Deliverables].

3.2 Subject to the availability of Contractor's personnel, Contractor shall begin performance of the work required under this Agreement upon execution of this Agreement and shall use commercially reasonable efforts to complete the work and deliver the Deliverables to University and fully and completely [assemble or install] Deliverables on or before _____, 20___. In no event shall the installation of the Deliverables be completed by Contractor later than -----, 20__.

3.3 All Deliverables provided 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 Deliverables.

3.4 University may request changes to the specifications for the Deliverables by providing a written request to Contractor. If Contractor believes a change requested by University will increase Contractor's costs under this Agreement or will result in 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 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**, and [shall not or shall] include the operation or performance of the Deliverables in conjunction with any of University's existing equipment which does not constitute Deliverables.

4.2 University shall provide written notice to Contractor of the results of such testing and whether or not the Deliverables perform in accordance with the specifications or performance standards set out in **Exhibits A and B**, within 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 perform 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 do not perform as required by this Agreement, University shall provide written notice of non-acceptance to Contractor within 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 15 calendar day period, replace, modify, or improve the Deliverables at Contractor's sole expense to ensure that the Deliverables perform as required under this Agreement.

4.4 After such replacement, modification, or improvement, University shall conduct new acceptance tests within a 15 calendar day period and provide written notice to Contractor of the results of such testing within seven calendar days after the fifteen 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 grants to University a license for all Licensed Deliverables on the terms set forth Section 8.2.

5. Training. During installation of the Deliverables under Section 3, Contractor shall provide training to University personnel for the operation of the Deliverables at no additional charge.

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 the 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 ____% of the total purchase price.

7.1.2 Upon Contractor's delivery of the Deliverables to University, Contractor may invoice University for ____% of the total purchase price.

7.1.3 Upon Final Acceptance of the Equipment in accordance with Section 4 herein, Contractor may invoice University for the remaining ## % of the total purchase price. Contractor may, in its discretion, invoice University for 100% of the total purchase price upon Final Acceptance.

7.1.4 University shall pay invoices within 45 calendar days of receipt.

7.2 Notwithstanding the above, University shall pay Contractor for any change orders to the Deliverables as mutually agreed upon in writing by the Parties.

7.3 All payments to Contractor shall be subject to OAR 580-061-0050.

7.4 Billing Address. All invoices will be sent to:

7.5 Invoice Requirements. In connection with the services and Deliverables under this Agreement, Contractor will invoice University upon completion of each of the milestones listed in Section 7.1, above ("Invoice Period"). Contractor's invoices will provide detailed listing of the tasks completed and Deliverables delivered to complete the milestone listed in Section 7.1. 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.

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 as allowed under this Agreement, 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 Deliverables provided hereunder; (c) any license or certificate required by law or regulation to be held by Contractor to provide Deliverables 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 90 calendar days. In the event of termination pursuant to this Section 9.4, 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 30 calendar days written notice. 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 State of Oregon, 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 and Deliverables not provided.

10. Representations and Warranties of Contractor.

10.1 Contractor represents and warrants that the Deliverables to be provided by Contractor pursuant to this Agreement shall be provided 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 Equipment, 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).

10.4 Contractor represents that: (a) Contractor shall comply with all federal, state, and local laws, regulations, ordinances, and rules that are applicable to its activities and obligations under this Agreement; and (b) Contractor is not in arrears with respect to 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.

10.5 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** ("Warranty Period") 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, provided University notifies Contractor in writing promptly after discovery of defect or nonconformity and within the applicable Warranty Period. Contractor will pay expenses for travel by Contractor's personnel to University's facilities 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 if the effect 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, or a person or entity authorized by Contractor, except for maintenance and basic troubleshooting by University personnel or (ii) if the Deliverables are 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 are substantially inoperative for more than 30 calendar days during the Warranty Period described, 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 have been substantially inoperative.

11. Insurance.

11.1 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 the 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 by and through the University of Oregon, their officers and employees**" as additional insured.

Upon request, Contractor will provide to University an endorsement 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.

12. INDEMNIFICATION.

12.1 GENERAL INDEMNITY. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE UNIVERSITY AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND

AGENTS, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, OR LIABILITY, INCLUDING COSTS AND ATTORNEYS' FEES AT TRIAL, ON APPEAL, AND ON ANY PETITION FOR REVIEW, TO THE EXTENT CAUSED BY CONTRACTOR'S NEGLIGENCE OR WILFULL MISCONDUCT IN THE PERFORMANCE OF ANY OF CONTRACTOR'S OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT. Contractor shall defend, at its expense, by counsel approved by University, such approval not to be withheld unreasonably, any such suit or proceeding provided that: (a) University gives Contractor prompt notice in writing of any such suit and permits Contractor through the aforementioned counsel, to answer the charge and defend such suit; and (b) University gives Contractor all the needed information, assistance and authority, at Contractor's expense to enable Contractor to defend such suit. Contractor shall not be responsible for payment of any amounts under any settlement made without its prior written consent. Any settlement entered into by Contractor purporting to bind University shall be subject to University's prior written approval, which shall not be withheld unreasonably.

12.2 INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 12.1, 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, INCLUDING ATTORNEYS FEES, 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 Contractor shall defend, at its expense, by counsel approved by University, such approval not to be withheld unreasonably, any such suit or proceeding provided that: (a) University gives Contractor prompt notice in writing of any such suit and permits Contractor through counsel, to answer the charge of infringement and defend such suit; and (b) University gives Contractor all the needed information, assistance and authority, at Contractor's expense to enable Contractor to defend such suit. Contractor shall not be responsible for payment of any amounts under any settlement made without its prior written consent. Any settlement entered into by Contractor purporting to bind University shall be subject to University's prior written approval, which shall not be withheld unreasonably. The foregoing indemnity shall not apply to the extent such alleged or actual infringement arises as a result of (i) the use or incorporation of such Deliverables in a manner or in combination with any other products, devices or parts not specified in Contractor's specifications therefor, (ii) modifications of such Deliverables made by University or any party (other than Contractor) which were not approved by Contractor, or (iii) 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 Deliverable is infringing in a manner for which Contractor is obligated to indemnify University pursuant to this Section 12.2, Contractor shall, at its option, either (1) procure for University the right to continue using such infringing Deliverable; (2) replace the infringing Deliverable with a non-infringing item of like form, fit or function; (3) modify the Deliverable so that it no longer infringes; or (4) remove the Deliverable and refund the purchase price to University.

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 agency, office, or department of the State of Oregon), 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 shall maintain all fiscal records relating to the subject matter of this Agreement, and Contractor's performance hereunder, in accordance with Generally Accepted Accounting Principles. Additionally, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance of its duties under this Agreement. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

17. Miscellaneous.

17.1 Notices. Any notice under this Agreement 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.

17.2 Applicable Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between Contractor and University that arises from or relates to this Agreement (a "Claim"), shall be brought and conducted solely and exclusively within a Circuit Court for the State of Oregon. However, 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. BY EXECUTION OF THIS AGREEMENT, CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SUCH COURTS. In no way shall this section be construed as a waiver by the University of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court.

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 CONTRACT, 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 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.

17.6 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 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 only pay for completed work that has been accepted by University pursuant to this Agreement.

17.7 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.

17.8 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.

17.9 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.

17.10 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.

17.11 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, terrorism, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the Party obligated to perform, shall excuse the performance,

except for the payment of money, by such Party for a period equal to any such prevention, delay or stoppage.

17.12 Severability. If any term or provision of this Agreement shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law. The Parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable one that achieves the economic, legal and commercial objectives of the invalid and unenforceable provision to the greatest extent possible.

17.13 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.

17.14 Headings. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

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

17.16 Federal Provisions. If this Agreement is federally funded in whole or in part, Contractor must comply with all applicable provisions of OMB Circular A-110. Further, if this Agreement 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 Agreement or, if Deliverables have been provided and accepted, withhold payment until such required submittals have been received.

17.17 Foreign Contractor. 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 the obligations under this Agreement in the State of Oregon prior to entering into this Agreement.

17.18 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 obligations 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.

17.19 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 obligations under this Agreement from minority, women, or emerging small business enterprises.

17.20 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.

17.21 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 the obligations under this Agreement. Contractor also covenants that in the performance of the obligations under 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.

17.22 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.

17.23 Communications Standards and Accessibility Requirements. Contractor will conform to all applicable Web standards and Web accessibility requirements found at: <http://webcom.uoregon.edu/webstandards> as well as all University Communications Standards as set forth in the UO Style Guide available at: <http://des.uoregon.edu/stylemanual.pdf>.

17.24 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.

17.25 Currency. All currency described in this Agreement is in U.S. dollars.

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

17.27 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 Equipment and be binding upon the Parties.

17.28 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 Parties hereby acknowledge and agree that this Agreement has been negotiated by the Parties 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 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
[INSERT CONTRACTOR NAME]

By (Sign) _____

Name (Print) _____

Title _____

Date _____

Exhibit A - Deliverables

The Deliverables consist of:

[TO BE DETERMINED]

Exhibit B- Technical Specifications

Specifications. The Equipment will meet the following specifications:

- 1.1.1. Lasers: 405, 488, 561, and 638nm (4).
- 1.1.2. Detection Channels: 2 x scatter, 6 x fluorescence (8).
- 1.1.3. Nozzle sizes: 85, 100, 135 um.
- 1.1.4. Automatic adjustment of optical axis.
- 1.1.5. Automatic adjustment of side stream.
- 1.1.6. Rapid sample line cleaning.
- 1.1.7. Rapid sterilization.
- 1.1.8. Disposable sorting cell.
- 1.1.9. Rapid set up time.
- 1.1.10. Rapid sorting ($\geq 20,000$ cells/second).
- 1.1.11. Multi-tube sorting: > 6 tubes, upgradeable to 96 well plate.
- 1.1.12. Computer System & FACS Software: Includes monitors, FCS 3.0 compliant.
- 1.1.13. Does not require operator assistance.
- 1.1.14. Unit Size: Less than 75x75x75 cm.
- 1.1.15. Weight: Less than 100 kg.

Exhibit C--Maintenance and Support (1 page)

[TO BE DETERMINED]