



**EXHIBIT A – TERMS AND CONDITIONS/SAMPLE CONTRACT
ELECTRONIC FOOD WASTE METERING SYSTEM
CONTRACT NO. 193840**

This Contract is between Oregon State University for its University Housing & Dining Services (UHDS) ("OSU"), and [Contractor's name] ("Contractor").

WHEREAS, OSU competitively solicited for the services outlined in this Contract under Request for Proposal number SF193840P entitled Electronic Food Waste Metering System and Contractor was selected as the Proposer best able to provide this service; and

WHEREAS, Contractor understands the requirements for the services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the services;

NOW, THEREFORE, OSU and Contractor agree as follows:

1. CONTRACT TERM AND TERMINATION:

A. CONTRACT TERM.

This Contract is effective on the date of last signature and expires one (1) year from date of last signature. OSU has the option to extend the term of this Contract for three (3) additional three (3) year terms. OSU may exercise this option to extend by providing written notice to Contractor prior to the expiration of the Contract.

B. TERMINATION.

This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' written notice. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by OSU's budget and OSU determines, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, that it is necessary to terminate the Contract, or (d) if the OSU program for which this Contract was executed is abolished.

OSU may also terminate this Contract at any time by written notice for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) 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 conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. Termination of this Contract under this Section or any other section is without prejudice to OSU's other rights and remedies.

C. REMEDIES FOR CONTRACTOR'S DEFAULT.

In the event Contractor is in default (which includes without limitation, incomplete

services), OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

2. STATEMENT OF WORK:

A. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall provide OSU with the following services during the Term of this Contract. OSU reserves the right to add or change any product and/or service over the term of the contract.

1. Product: Contractor will provide a Food Waste Metering System for each of the three (3) main dining centers (Southside Station at Arnold, Marketplace West, and McNary), three (3) satellite locations (Cascadia Market in the ILLC building, Off the Quad in the Memorial Union and Bing's at Weatherford) and University Catering (located within Southside Station @ Arnold) with the ability to add other locations as needed. The metering system must feature the following equipment:

a. Scales to measure the amount of waste generated

b. Camera that is integrated to the system and attached to the scale to capture images of products being discarded

c. A touch-screen user interface device that interacts with the employee who is discarding the product to answer a series of customized questions. These should include, but not be limited to:

- Type of food
- Date and time of the interaction/discard
- Reason the item is being discarded
- Concept or Micro Restaurant the item is being discarded from
- Meal period associated with this item
- Employee entering this information
- Pricing per unit of measure being captured for the item being discarded

d. Manual editing of the touch-screen user interface device must be allowed to correct errors and/or discrepancies.

e. The touch-screen user interface device must be able to work independently of the scales and camera systems and allow manual input of the weight or unit of measure for the discarded products for use in units with limited space. This

device should also have the capacity to operate wirelessly or hardwired to the University's Ethernet network.

f. The Food Waste Metering System must have supporting data collection software that allows the collected information to be instantly transferred to a reporting dashboard in a vendor-hosted data warehouse.

g. Managers, Chefs and other personnel as defined by UHDS should be able to access this dashboard in real-time via a web-browser reporting dashboard as well as via email reports and alerts.

h. All necessary hardware and equipment required by the system to operate successfully must be supplied by the contractor. UHDS must have the option to upgrade the equipment to the latest technology throughout the life of this contract as deemed necessary by UHDS. UHDS does not expect to pay additional fees for this equipment.

i. Each unit of equipment must require no more than a standard 15 Amp 100-125V power outlet.

2. Network Requirements:

Contractors Food Waste Metering System must not require any changes to OSU's internal network, for the system to operate effectively.

UHDS will provide a wired or secure wireless (WAP2 Enterprise)

3. Equipment: Contractor to provide and maintain, at a minimum, the following equipment, in the locations specified. UHDS reserves the right to add or change the equipment or locations at their discretion over the term of the contract. UHDS must approve all equipment before installation to ensure it meets the desired specifications and is in good working order. UHDS retains the right to ask for any specification sheets for the equipment to ensure it meets OSU needs.

Below is an estimated list of equipment UHDS would like to have at each location that can be used for the purposes of this RFP. Final equipment selections will be determined between UHDS and the Contractor:

- a. Location 1/Southside Station at Arnold:
 - One (1) each food waste scale
 - One (1) each scanner/camera feature
 - One (1) each touch-screen user interface device
- b. Location 2/Marketplace West:
 - One (1) each food waste scale
 - One (1) each scanner/camera feature
 - One (1) each touch-screen user interface device
- c. Location 3/McNary Dining Hall:

- One (1) each food waste scale
 - One (1) each scanner/camera feature
 - One (1) each touch-screen user interface device
- d. Satellite Location 1/Cascadia Markets & Peets:
- One (1) each food waste scale
 - One (1) each scanner/camera feature
 - One (1) each touch-screen user interface device
- e. Satellite Location 2/Off the Quad:
- One (1) each food waste scale
 - One (1) each scanner/camera feature
 - One (1) each touch-screen user interface device
- f. Satellite Location 3/Bing's at Weatherford:
- One (1) each touch-screen user interface device – manual entry only as space is very limited
- g. University Catering Program
- One (1) each food waste scale
 - One (1) each scanner/camera feature
 - One (1) each touch-screen user interface device

Contractor to own the equipment and will be responsible for all maintenance and service. Equipment needing replacement under normal wear and tear, will be replaced by Contractor at their cost within twelve (12) hours of first notification. Timeliness of service provided by Contractor is essential. Rapid response is expected for general service and equipment questions and concerns.

Contractor must be capable of servicing equipment within a twelve (12) hour response time and will provide replacement equipment if needing to be removed for repair. Contractor must provide regularly scheduled quarterly equipment maintenance as part of the contract.

4. Reports: The Food Waste Metering System needs to be able to generate a number of reports. These need to cover a variety of time periods including, but not limited to, daily, weekly, monthly, and yearly reports. Data should also be stored and available for UHDS to utilize covering multiple years' worth of reporting.

The touch-screen user interface device should have a near real-time dashboard showing predefined daily and ongoing reports as mutually agreed upon by UHDS and the Contractor.

The system needs to have a near real-time web-browser dashboard that is accessible to multiple UHDS users at the same time. The reports need to be in various forms of directional charts that allow click through filtering to drill down to detailed transactional reports.

These reports need to be able to show food waste summaries for each individual concept/micro restaurant level, as well as combined reports show food waste for each dining center and all dining centers combined.

The Food Waste Metering System needs to allow UHDS to set performance goals and send instant alert emails to various UHDS personnel related to these goals.

Examples of the types of reports UHDS is looking for include, but not limited to,

- a. Total waste by value
- b. Total waste by weight
- c. Top wasted food items
- d. Total number of uses of the equipment per day
- e. Overall results for year to date and other time periods as defined by UHDS
- f. Top Waste by reason
- g. Waste by time of day
- h. Total daily waste reports for various input factors (value, weight) over various time periods (weekly, monthly)
- i. Other as defined by UHDS

The Contractor must have the ability to work with UHDS to develop customized reports as needed.

The contractor will continue to provide data reporting access for UHDS personnel to a real time online dashboard and the web-browser reporting system throughout the term of the contract.

Reports should be able to be exported into a .csv format.

5. Additional Services: In addition to the product and equipment listed above, the Contractor will also provide the following services:

- a. Customer Service: Contractor will assign a dedicated account representative to assist UHDS with using the equipment, generating reports, addressing concerns or questions, and helping with future ideas. In addition, the dedicated account representative should be able to help build a solid vendor/customer relationship with UHDS. UHDS reserves the right to request a change in account representative at any time for any reason.
- b. Training: Contractor must be able to provide trainers that are knowledgeable with all aspects of the Food Waste Metering System and be able to teach this knowledge to UHDS employees utilizing various training methods.

A coordination meeting between the Contractor and UHDS must occur before implementation. At least two (2) days of on-campus training must be provided by the Contractor to train UHDS personnel on the use of software, equipment, and general product success practices. These two

(2) days of training will be one (1) day for management regarding reports, service, maintenance, trouble-shooting, and general system overview; one (1) day for staff regarding physical use of equipment.

Trainings must also be available via webinars and other online platforms to assist with implementation, reporting, upgrades, and continued trainings for new employees as defined by UHDS.

The account representative and/or trainer must be able to be on campus within six (6) hours if necessary.

B. ACCEPTANCE OF SERVICES.

Services furnished under this Contract are subject to acceptance by OSU. If OSU finds services furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may pursue any of the remedies for Contractor's default detailed in that Section above.

C. BUSINESS REVIEWS.

Contractor will participate in Business Reviews annually. Business Reviews will be scheduled by the Procurement and Business Systems Manager in OSU UHDS and will include attendance by OSU representatives, and Contractor's Account Representative. Topics will include, but not be limited to, annual results, new strategies and trends on food waste reductions, any issues and concerns of both OSU and Contractor, pricing, equipment review, strategies for improving results, and any additional training needs.

3. COMPENSATION:

The total amount available for payment to Contractor and for authorized reimbursement to Contractor is \$[insert total amount of contract].

A. METHOD OF PAYMENT FOR SERVICES.

Fixed Price for Everything) OSU shall pay Contractor \$[insert fixed price] for completing all services required under this Contract

B. BASIS OF PAYMENT FOR SERVICES

OSU shall pay Contractor all amounts due for services completed and accepted by OSU at the following milestones after OSU's approval of Contractor's invoice to OSU for those services:

At signing of Contract 50%

At completion of equipment installation, testing & training to ensure system is ready for implementation 30%

After implementation and the system has been working trouble free to UHDS satisfaction for 60 days 20%

C. EXPENSE REIMBURSEMENT.

OSU will not reimburse Contractor for any expenses under this Contract.

D. INVOICES AND PAYMENT TO CONTRACTOR.

Contractor shall send invoices to OSU for services completed and accepted by OSU. Contractor shall include in each invoice:

- a. The Contract number;
- b. A description of services performed, including the dates services were performed, all deliverables delivered during the period of the invoices, the rate(s) for services performed, and the total cost of services;
- c. Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract;
- d. The total amount due and the payment remittance address.

The Contractor shall send all statements to 957 SW Jefferson Avenue 'Attention UHDS Accounts Payable', Oregon State University, Corvallis, OR 97333 and via email to the payment remit email address:

DiningSystems@oregonstate.edu

OSU shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU for payment of all amounts OSU owes to Contractor. Payment of OSU contracts is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance pursuant to ORS 293.462.

E. PRICE ESCALATION.

Pricing shall remain the same for the initial term of the contract. Contractor may negotiate pricing for subsequent extension terms after this initial term. Pricing will be transparent. Contractor shall submit in writing any proposed increase in pricing to OSU UHDS for consideration at least sixty (60) days prior to end of each term. Contractor must provide documentation in support of the request. The requested adjustment will not exceed 3% or the percent change in the Consumer Price Index ("CPI") for the Portland-Salem, OR-WA area, whichever is less, from a period not greater than twelve (12) months prior to the time of the request for the adjusted pricing. See https://data.bls.gov/timeseries/CUUSA425SAF1?output_view=pct_12mths No additional fees will be charged to OSU unless mutually agreed upon by OSU UHDS and the Contractor.

4. INSURANCE:

A. GENERAL LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance, including Products and Completed Operations coverage, with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. Such insurance policy is to be issued by an insurance

company authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU. OSU and its officers, board members, employees, and agents shall be included as additional insured in said insurance policy to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

B. AUTOMOBILE LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Automobile Liability Insurance. This coverage can be provided by combining the Automobile Liability Insurance with the General Liability Insurance. Coverage limits shall not be less than \$2,000,000 combined single limit per occurrence.

C. PROPERTY INSURANCE.

The Contractor must maintain Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property that is stored at OSU.

D. PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory.

E. SUBCONTRACTORS

If Contractor enters into subcontracts for any services to be provided by Contract to OSU, Contractor shall require that all subcontractors maintain insurance meeting all the requirements stated in section 4.

F. WORKERS' COMPENSATION.

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126.

G. CERTIFICATES OF INSURANCE.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance and any applicable endorsements to the OSU Contract Administrator, upon request. The Certificate(s) will specify all of the parties who are Additional Insureds. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

H. NOTICE OF CANCELLATION OR CHANGE.

Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to OSU, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to OSU. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify OSU of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

5. INDEMNIFICATION:

A. INDEMNITY.

- a. Contractor shall indemnify, hold harmless and, not excluding OSU's right to participate, defend OSU and its officers, board members, employees, agents and other representatives from and against all liabilities, claims, actions, damages, losses, or expenses, including without limitation reasonable attorneys' fees and costs, that: (i) are caused or alleged to be caused, in whole or in part, by the negligence, omissions, wrongful acts or willful misconduct of the Contractor or any of its officers, directors, agents, employees, or subcontractors, or (ii) alleging Contractor's services, information or materials supplied by Contractor to OSU under this Contract, or OSU's use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party.

B. DEFENSE.

- a. Contractor shall have control of the defense with counsel reasonably acceptable to OSU, except that: (i) OSU may join the defense with its own counsel and at its own expense if OSU determines there is a conflict of interest or there is an important government principle at issue, and (ii) OSU'S consent is required for any settlement that requires OSU to pay any money, does not release OSU from all liability from the claim, or adversely affects OSU's interest.

6. LAWS AND POLICIES:

A. APPLICABLE LAW; JURISDICTION AND VENUE.

- a. The laws of the State of Oregon (without giving effect to its conflict of laws principles or laws) govern all matters arising out of or relating to the Contract, including, without limitation, its validity, interpretation, construction, performance or enforcement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of Oregon for Benton County.
- b. Notwithstanding paragraph (a), if a legal action or proceeding must be brought in a federal forum, the party shall bring the legal action or proceeding in the United States District Court for the District of Oregon. This paragraph does not authorize Contractor to bring a legal action or proceeding against OSU in a federal forum except to the extent Congress has validly abrogated OSU's sovereign immunity. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in paragraph (b), the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

B. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES.

- a. The parties shall at all times comply with all applicable federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable

standards and policies of OSU, including without limitation any such laws or regulations regarding employment discrimination. If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations and policies.

- b. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in OAR 125-055-0115; (xi) the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628; (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

C. FEDERALLY REQUIRED PROVISIONS.

- a. ANTI-KICKBACK ACT (40 U.S.C. 3145). Contractor certifies compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Contractor or Subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to OSU.
- b. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352). Contractors that apply or bid for a contract of \$100,000 or more, must file the required certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must require any subcontractor who applies or bids for subcontract of \$100,000 or more to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.
- c. CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED. If this

Contract provides for payments in excess of \$150,000, Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- d. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708). For all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. DEBARMENT AND SUSPENSION EXECUTIVE ORDERS 12549 AND 12689. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Before a contract award of \$25,000 or more is made, verification is required that the intended awarded party is not on the government-wide exclusions in the SAM. Required verification must be made by checking the SAM Exclusions. Compliance with Subpart C of 2 CFR Part 180 by checking that the intended awarded party is not listed on the SAM Exclusions, before making a contract award, will flow down from tier to tier for contract awards of \$25,000 or more. Contractor must include a term or condition similar to this term, in any subsequent lower tier contract awards of \$25,000 or more. Contractor hereby certifies they are not listed on the government-wide exclusions in the SAM.
- f. ENERGY POLICY AND CONSERVATION ACT. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- g. EQUAL EMPLOYMENT OPPORTUNITY. Contractor must comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity,"

and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- h. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

D. PUBLIC RECORDS LAW NOTICE.

OSU advises Contractor that information OSU receives may be subject to public inspection under Oregon Public Records Law (ORS 192.410-192.505).

E. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION.

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR ch. 437, for the products subject to this provision.

F. EXPORT CONTROL.

Contractor acknowledges that OSU has students and faculty who are foreign nationals who may work with the services, product or technology received from Contractor pursuant to this Contract. Contractor represents that it has informed OSU in writing, prior to executing this Contract if it is providing OSU any product or technology subject to the U.S. Export Administration Act of 1979, the Export Administration Regulations and the International Traffic in Arms Regulations, and if so, under what Commerce Control List number(s) or U.S. Munitions List number(s) it is controlled.

G. FIREARMS POLICY.

OSU has adopted a policy that prohibits Contractor and Contractor's employees, agents, and subcontractors from possessing firearms on OSU property.

H. PARKING.

Contractors doing business on the OSU campus may be required to have a permit to park if utilizing restricted street parking or parking lots. Contractor parking permits may be obtained through OSU's Office of Transit & Parking Services.

I. SEXUAL HARASSMENT POLICY.

OSU has policies that prohibit sexual harassment of members of the OSU community and in keeping with those policies Contractor and Contractor's employees, agents, and subcontractors are prohibited from engaging in sexual harassment of members of the OSU community.

J. SMOKING POLICY.

Contractor shall comply with OSU University Standard 07.020 as governed by Oregon Law (OAR Chapter 576, Division 040) that students, faculty, staff, consultants, contractors, and visitors are entitled to and will be provided smoke-free areas in which to study, work, teach, conduct research, transact business, and otherwise participate in University's activities.

Smoking or carrying any lighted Smoking Instrument, including electronic cigarettes or devices, is prohibited

(a) Within Enclosed University Facilities, including but not limited to offices, reception areas, laboratories, lavatories, classrooms, stairwells, hallways, lobbies, meeting rooms, gymnasiums, elevators, and storage rooms;

and

(b) In any indoor or outdoor space on the Corvallis campus or Bend campus, including but not limited to parking lots, grounds, rooftops, athletic facilities, entrances and exit ways;

(c) Within all vehicles on Corvallis campus or Bend campus;

(d) On all university property within ten (10) feet of any entrance, window, or ventilation system of any Enclosed University Facility where smoking is prohibited or of any Service Line that extends out of doors; and

(e) Within any university-owned or controlled vehicle.

Research Exception

An exception to this policy may be granted by the Vice President for Research, or designee, for a research study if the study adheres to any applicable campus health and safety guidelines and is approved by the university Institutional Review Board, Institutional BioSafety Committee, or the Institutional Animal Care and Use Committee, as applicable.

Appeal

Anyone aggrieved by the application of these rules may appeal in writing within 10 days to the Vice President for Finance & Administration or designee. If the Vice President of Finance & Administration or designee does not respond to the appeal in writing within 10 days of receiving the appeal, the appeal is deemed denied.

Anyone aggrieved by the application of these rules on the Bend campus may appeal in writing within 10 days to the Vice President for OSU-Cascades or designee. If the Vice President for OSU-Cascades does not respond to the appeal in writing within 10 days of receiving the appeal, the appeal is deemed denied.

K. WEBSITE ACCESSIBILITY.

If Contractor is designing or developing web page(s) for OSU under this Contract, Contractor shall design and develop (as applicable) the web page(s) in conformance with OSU's Policy on Information Technology Accessibility available at

7. GENERAL TERMS AND CONDITIONS:

A. ORDER OF PRECEDENCE.

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

B. NO THIRD PARTY BENEFICIARY.

OSU 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 shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties

C. ASSIGNMENT/SUBCONTRACT/DELEGATION.

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of OSU. Any assignment of rights or delegation of duties is prohibited under this Section, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of duties in violation of this Section is void. OSU's consent to delegation does not relieve Contractor of any of its performance obligations.

D. WAIVER.

No waiver of an obligation under this Contract is effective unless it is in writing and signed by the party granting the waiver. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Contract operates as a waiver or estoppel of any right, remedy or condition.

E. ACCESS TO RECORDS AND AUDIT.

Contractor shall maintain accurate books, records, documents, and other evidence (collectively, "Records") following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit OSU and the federal government and their respective duly authorized representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for OSU's review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU under this Contract.

OSU shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU may request an independent third-party audit no more than one time per calendar year. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-

party audit.

F. GOVERNMENT EMPLOYMENT STATUS.

Contractor certifies that either (a) it is not currently employed by OSU or the federal government; or (b) if Contractor is so employed, Contractor has fully disclosed to OSU in writing such employment status, is in full compliance with any statutes, regulation, and OSU or the federal government policies regarding employee contracting, and agrees to indemnify and hold harmless OSU for any failure by Contractor to comply with such statutes, regulations, or policies.

G. INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the services. Contractor is not an officer, employee or agent of OSU as those terms are used in ORS 30.265. Contractor has no authority to act on behalf of OSU and shall not purport to make any representation, contract, or commitment on behalf of OSU.

H. NOTICE.

- a. A party giving or making any notice, request, demand or other communication (each a "Notice") pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery: personal delivery, United States Postal Service Registered or Certified Mail (return receipt requested and postage prepaid), overnight courier (with all fees prepaid), facsimile or e-mail to the other party's address as listed on the signature page of this Contract. Notice to OSU is to be delivered to the Contract Administrator and Departmental Administrator except where this Contract expressly directs or permits delivery of Notice to a different Department.
- b. Notice is effective: (i) if given by facsimile, upon receipt by the sending party of an appropriate facsimile confirmation; (ii) if given by e-mail, by confirmation of receipt by return e-mail, which is not satisfied by an automatically-generated message that the recipient is out of the office or otherwise unavailable; or (iii) if given by any other means, when delivered at the address specified in this Section.

OSU Contract Administrator
OSU PCMM
ATTN: 193840 Contract Administrator

644 SW 13th Street
Corvallis, OR 97333
Telephone: (541) 737-4261
Fax: (541) 737-2170
E-mail: pacs@oregonstate.edu

and: OSU Departmental Administrator
Kerry Paterson
Director of Residential Dining &
Catering
957 SW Jefferson Ave
Corvallis, OR 97333
Telephone: 541-737-0689
Fax: 541-737-0686
E-mail:
Kerry.paterson@oregonstate.edu

CONTRACTOR Contract Administrator

[Name]

[Title]

[Address]

[City, State, Zip]

Telephone: [Phone Number]

Fax: [Fax Number]

E-mail: [E-Mail Address]

I. OSU NAME AND TRADEMARK.

Contractor shall not identify this Contract, nor use OSU's names, trademarks, service marks, or other proprietary marks in any of Contractor's marketing material, advertising, press releases, publicity matters or other promotional materials without the prior written consent of OSU, which consent may be withheld in OSU's sole discretion.

J. RECYCLED PRODUCTS.

Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract.

K. SALES AND USE TAXES.

OSU shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor's sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income. Contractor shall indemnify, defend, and hold harmless OSU from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to invoice OSU or which Contractor otherwise failed to pay in a timely manner.

L. FORCE MAJEURE.

Neither party is responsible for delay caused by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond the party's reasonable control and the nonperforming party has been unable to avoid or overcome the act or event by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of nature, terrorist acts, or other acts of political sabotage or war. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

M. *(OPTIONAL CLAUSE: Include the following only if Contractor agrees in Exhibit B - Certifications, Section IV. Permissive Cooperative Procurements.)* PERMISSIVE COOPERATIVE PROCUREMENTS.

Contractor agrees to make prices offered under this Contract available to other Oregon public agencies upon the same terms and conditions set forth in this Contract. The prices offered to other public agencies shall be at the same rate as offered to OSU. OSU does not guarantee purchases from any other public agencies. Any such purchases by a public agency other than OSU are directly between the

Contractor and the other public agency. The other public agency enjoys the same obligations and rights as OSU under this Contract, except for the Administrative Fee which shall be paid to OSU and not to the other public agency. Contractor shall provide written notification to OSU when a new public agency begins utilizing this Contract. The total expenditures of other public entities shall be included in the volumes reported to OSU and included in the calculation of the Contract Administrative Fee. Should the total purchases by OSU and other public entities collectively trigger any volume discounts, Contractor shall apply such discounts to fees charged to OSU.

N. EXECUTION AND COUNTERPARTS.

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

O. SURVIVAL.

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

P. SEVERABILITY.

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract remain in full force and effect if the essential terms and conditions of this Contract for both parties remain valid, legal and enforceable.

Q. MERGER.

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless it is in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

8. CERTIFICATIONS AND SIGNATURES:

This Contract must be signed by an authorized representative of Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.

C. Pursuant to OSU Standard 580-061-0030 Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts;

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

CONTRACTOR:

Signature: _____

Date: _____

By: _____

Title: _____

OSU:

Signature: _____

Date: _____

By: _____

Title: _____