



**REQUEST FOR PROPOSAL
No. BT154985P**

Digital Signage Software

PROPOSAL DUE DATE AND TIME:
November 30, 2011 (3:00 PM, PST)

OSU Procurement and Contract Services Offices are open from 8:00 am – 12:00 noon and 1:00 pm – 5:00 pm.
Offices are closed during the 12:00 noon – 1:00 pm lunch hour.

SUBMITTAL LOCATION:

Oregon State University
Procurement and Contract Services
644 SW 13th Avenue
Corvallis, Oregon 97333

1.0 GENERAL

1.01 SCHEDULE OF EVENTS:

- Request for Proposal Issue Date November 14, 2011
- Deadline for Request for Clarification or Change November 21, 2011 (3:00 pm, PST)
- Proposal Due Date and Time November 30, 2011 (3:00 pm, PST)

This Schedule of Events is subject to change. Any changes will be made through the issuance of Written Addenda.

1.02 PRE-PROPOSAL CONFERENCE:

A Pre-Proposal Conference will not be held.

1.03 ISSUING OFFICE:

The Procurement and Contract Services (PaCS) department of Oregon State University (OSU) is the issuing office and is the sole point of contact for this Request for Proposal. Address all concerns or questions regarding this Request for Proposal to the Administrative Contact identified below:

1.04 ADMINISTRATIVE CONTACT:

Name: Bonnie Tufts
Title: Procurement Analyst
Telephone: 541-737-7353
Fax: 541-737-4456
E-Mail: Bonnie.tufts@oregonstate.edu

1.05 DEFINITIONS:

As used in this Request for Proposal, the terms set forth below are defined as follows:

- a. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Request for Proposal.
- b. "Attachments" means those documents which are attached to and incorporated as part of the Request for Proposal.
- c. "Proposal" means an offer, binding on the Proposer and submitted in response to a Request for Proposal.
- d. "Proposer" means an entity that submits a Proposal in response to a Request for Proposal.
- e. "Proposal Due Date and Time" means the date and time specified in the Request for Proposal as the deadline for submitting Proposals.
- f. "Request for Proposal" (RFP) means a Solicitation Document to obtain Written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.
- g. "Responsible" means an entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.
- h. "Responsive" means a Proposal that has substantially complied in all material respects with the criteria outlined in the Request for Proposal.
- i. "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or meanings.

2.0 INTRODUCTION AND BACKGROUND

2.01 INTRODUCTION

Oregon State University (OSU) Procurement and Contract Services (PaCS) is seeking Responsive Responsible Proposers to submit Proposals for a standard digital signage software solution for current and future displays to enable continuity of content, emergency notification, and revenue generation to campus departments who desire to participate.

2.02 BACKGROUND:

The University has some networked and numerous, scattered individual displays across campus, and one industrial park. OSU seeks to endorse one standard digital signage solution for current and future displays to enable continuity of content, emergency notification, and revenue generation to campus departments who desire to participate.

2.03 OREGON STATE UNIVERSITY:

Founded in 1868, Oregon State University is a comprehensive, research-extensive, public university located in Corvallis. OSU is a member of the Oregon University System and one of only two American universities to hold the Land Grant, Sea Grant, Space Grant and Sun Grant designations. OSU is also the only Oregon institution to hold the Carnegie Foundation's top ranking for research universities, a recognition of the depth and quality of OSU's graduate education and research programs.

Through its centers, institutes, Extension offices and Experiment Stations, OSU has a presence in almost every one of Oregon's 36 counties, including its main campus in Corvallis, the Hatfield Marine Sciences Center in Newport and OSU-Cascades Campus in Bend. OSU offers undergraduate, masters and doctoral degrees through 12 academic colleges enrolling more than 20,000 students from every county in Oregon, every state in the country and more than 90 nations.

3.0 SPECIFICATIONS / STATEMENT OF WORK

3.01 REQUIRED SPECIFICATIONS:

In order to qualify as a Responsive Proposer, the Proposal needs to meet the required specifications below. After verification that the required specifications have been met, OSU will award points based on the qualities of the specifications offered by the Proposer.

- a) Static Screens
 - PowerPoint
 - Images (The system should minimally support .jpeg, .png, .bmp, .tiff)
 - Flexible layout of screens
- b) Video Playback with Sound
 - File format shall be H.264, mpeg4
 - Full motion playback at or near high definition quality (1080p, 720p, 480p at 30 frames per second)
 - Support both 16:9 and 4:3 ratios
- c) Emergency Alert Override
 - Must Work with Bb Connect Ed system (www.blackboard.com)
 - Immediate full global system override of all individual players and groups
- d) Administration
 - Roles/Permission
 - Administrative Contributor, and Editor Roles with tiered permissions based on authority
 - Broadcast and Narrowcasts of content

- Individual Control over players as well as Global (i.e. OSU control)
 - Easy integration in to OSU Directory Services (Active Directory support)
 - Authentication via LDAP and/or CAS
- Enterprise level display status indicators over the network
- e) Scheduling of Screens
 - Duration (Start and end date of screens)
 - Individual and Multiple player scheduling
 - Zonal scheduling (at least 3 level structure)
 - Programmable dynamic layouts (i.e. single to multi windows per screen with ability to switch layouts)
- f) Dynamic Scheduling of Screens/Day-parting
 - Frequency (every hour, # minutes, days, etc.)
- g) RSS Feed Input and Output Capability
- h) Fully functional Transitions
 - Smooth transitions between screens
 - Random capability
- i) Disability Compliance
 - Audio with text bulletins
 - Large Font/Text for hearing and vision impairment
 - Subtitles/Closed Captioning for Video Presentations
 - Emergency Messaging functionality
 - Attention Sound (Chime/Alarm) and Volume Control
- j) Interface with Scheduling Software/Databases
 - EMS Enterprise™ Software by Event Management Solutions (<http://www.dea.com>)
 - RecTrak software by Vermont Systems (<http://www.vermontsystems.com>)
 - Display meeting times and event titles
 - Automatic updates from database listings
- k) Interactive displays
 - Proposer would offer interactive options for advertising and way finding purposes
- l) Provide Usage Metrics
 - Playtime of individual screens
 - Touches on individual regions for touchscreens
- j) Software Support (Clearly stated cost, duration, and scope of coverage)
- k) Service Patches and Upgrades (to include major upgrades as part of contract)
- l) Software and Training
 - Proposer shall provide simple to use management, and content creation software with unlimited client access to features and development tools.
 - Proposer shall provide tutorials/training materials, written and online, for management and content creation software.
 - Server software shall provide administration of all display indicated health and status of client hardware.
 - Provide onsite end user and backend training for approximately 20 people at beginning of rollout.

3.02 PREFERRED SPECIFICATIONS:

OSU will award additional points for Proposals able to meet the preferred specifications below.

- a) Directory Access to OSU servers
 - Signage server able to serve access content from OSU file servers
- b) Remote control of screens
 - Power (on/off/standby)
 - Volume

- Automatic ambient volume compensation
- View playback with management console
- c) Live Video Streams (tuner, Internet)
 - Cable / Satellite Broadcasts
 - Internet Streaming video in various formats (H.264 and Flash Video required)
- d) Feature Subscription Capability
 - Weather service
 - News
- e) Hardware/Software independence (no proprietary hardware required)
- f) Workstation Screen Saver
 - Ability to broadcast screensaver to multiple workstations
- g) Hosted Server Solution (optional)
 - Proposer would host and maintain content server offsite
- h) SDK open to campus

3.03 TERMS AND CONDITIONS:

OSU's terms and conditions governing the purchase resulting from this RFP are included at Attachment A.

3.04 MANUFACTURER'S NAMES AND APPROVED EQUIVALENTS:

Unless qualified by the provision "NO SUBSTITUTE" any manufacturers' names, trade name, brand names, information and/or catalogue numbers listed in a specification are for information and not intended to limit competition. Proposers may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). If proposals are based on equivalent products, indicate in the proposal form the manufacturers' name and number. Proposers shall submit with their proposal, sketches, and descriptive literature, and/or complete specifications. Reference to literature submitted with a previous proposal will not satisfy this provision. Proposers shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Proposals, which do not comply with these requirements, are subject to rejection. Proposals lacking any written indication of intent to provide an alternate brand will be received and considered in complete compliance with the specification as listed in the RFP.

4.0 PROPOSER QUALIFICATIONS

4.01 MINIMUM QUALIFICATIONS:

In order to qualify as a Responsive Proposer, the Proposer needs to meet the minimum qualifications outlined in 3.01 Required Specifications. After verification that the minimum qualifications have been met, OSU will award points based on the level of the Proposer's qualifications.

- a. An established digital signage software solution proposer with references to demonstrate application (minimum 3 years) experience.
- b. Proposer shall submit a support plan or support plan options to include support response time, levels of support and issue escalation policies.
- c. Provide MTBF (Mean Time Between Failure) estimates for both signage client and server hardware.
- d. Warranty coverage statements for both signage client hardware and server hardware describing warranty services/policies and RMA exchange.

5.0 REQUIRED SUBMITTALS

5.01 QUANTITY OF PROPOSAL:

Submit one (1) original Proposal and five (5) duplicate copies for evaluation committee. Mark original Proposal as "ORIGINAL". Original should contain original signatures on any pages where a signature is required. Proposals should contain the submittals listed in this section below:

5.02 REQUIRED SUBMITTALS:

It is the Proposer's sole responsibility to submit information in fulfillment of the requirements of this Request for Proposal. If pertinent information or required submittals are not included within the Proposal, it may cause the Proposal to be rejected or have an adverse impact on evaluation.

Proposers should submit the following information:

- Provide a brief history of the firm including the number of years your firm has been in the business of providing digital signage solutions and the services requested in this RFP.
- Include other solutions your firm markets as well and the demographic breakdown of your customer base (education, healthcare, government, private industry, etc.).
- State the total number of your firm's full time employees as well as the breakdown of employees dedicated to:
 - Total number of full time employees
 - System development
 - Software support
 - Help desk support
 - Outboard trainers/support staff
- Provide a list of higher education clients who are using your system.
- Does your firm utilize subcontractors for installation and/or implementation? If so, how?
- Is the system you propose developed and maintained by your staff or are you a third party provider who uses a system developed by another developer? If so, whose system do you propose to use?
- Description of how the goods or services offered specifically meet the required and preferred specifications described in section 3 and the Proposer's minimum qualifications described in section 4.
- Complete and itemized pricing of the software, support plans, and warranty options.
- Attachment B, Certifications, fully completed.
- Attachment C, References, fully completed.

6.0 EVALUATION AND AWARD

6.01 EVALUATION:

The stages of review and evaluation are as follows:

- a. **Determination of Responsiveness:**
OSU will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions or are incomplete may be deemed non-Responsive. Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. A proposer has the right to appeal the decision pursuant to OAR 580-061-130(5)(a).
- b. **First Stage Evaluation:**
Those Proposals determined to be Responsive will be evaluated using the required submittals. Proposals will be scored based on the evaluation criteria listed below in section 6.03. Scores will be used to determine Proposer's within a competitive range. The competitive range will be made of

Proposers whose individual scores, when viewed together, form a group of the highest ranked Proposers above a natural break in the scores.

OSU may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If this option is selected, Written notice of intent to award the Contract to the highest ranked Proposer will be provided to all Responsive Proposers.

c. **Second Stage Evaluation:**

If award is not made after the first stage evaluation, OSU may choose any of the following methods in which to proceed:

- i. Issue a Written invitation to Proposers within the competitive range requesting an interview, presentation, site visit or any other evaluative method that is relevant to the goods or services solicited in the Request for Proposal. Written invitations will contain the evaluation criteria and scoring that will be used by the evaluation committee.
- ii. Engage in oral or Written discussions with and receive best and final Proposals from all Proposers in the Competitive Range or all Proposers submitting Responsive Proposals. Discussions may be conducted for the following purposes:
 - Informing Proposers of deficiencies in their initial Proposals;
 - Notifying Proposers of parts of their Proposals for which OSU would like additional information; or
 - Otherwise allowing Proposers to develop revised Proposals that will allow OSU to obtain the best Proposal based on the requirements set forth in this Request for Proposal.

The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposal. Best and final Proposals will be scored based on the evaluation criteria listed below in section 6.03.

Points awarded in the first stage evaluation will not be carried to the second stage evaluation. Contract will be awarded to the Proposer who in OSU's opinion, best meets the requirements and qualifications of the RFP and OSU's needs.

d. **Additional Stages of Evaluation:**

If after completion of the second stage of evaluation, an award is not made, OSU may add another stage of evaluation using any of the methods outlined in the second stage evaluation above.

6.02 NEGOTIATIONS:

OSU may commence serial negotiations with the highest-ranked Proposer or commence simultaneous negotiations with all eligible Proposers. OSU may negotiate:

- a. The statement of work;
- b. The Contract price as it is affected by negotiating the statement of work; and
- c. Any other terms and conditions determined by OSU in its sole discretion to be reasonably related to those expressly authorized for negotiation. Accordingly, Proposers will not submit and OSU will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation.

Terms and conditions within the sample contract that are unrelated to the statement of work or Contract price may be negotiated after award, but before legal sufficiency review or execution of the Contract.

6.03 EVALUATION CRITERIA:

Points will be given in each criteria and a total score will be determined. The maximum points available for each criteria are identified below.

<u>Evaluation Criteria:</u>	<u>Points:</u>
Experience	10
Proposers qualifications relative to the minimum & preferred qualifications	25
Price of software and training	45
Price of ongoing upgrades, support & maintenance	20
Total	100

6.04 INVESTIGATION OF REFERENCES:

OSU reserves the right to investigate and to consider the references and the past performance of any Proposer with respect to such things as its performance or provision of similar goods or services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers. OSU further reserves the right to consider past performance, historical information and facts, whether gained from the Proposal, Proposer interviews, references, OSU or any other source in the evaluation process. OSU may postpone the award or execution of the Contract after the announcement of the notice of intent to award in order to complete its investigation.

7.0 INSTRUCTIONS TO PROPOSERS

7.01 APPLICABLE STATUTES AND RULES:

This RFP is subject to the applicable provisions and requirements of the Oregon Revised Statutes, Oregon Administrative Rules, and OSU Policies and Procedures.

7.02 REQUEST FOR CLARIFICATION OR CHANGE:

Requests for clarification or change of the Request for Proposal must be in Writing and received by the Administrative Contact no later than the Deadline for Request for Clarification or Change as specified in the Schedule of Events. Such requests for clarification or change must include the reason for the Proposer's request. OSU will consider all timely requests and, if acceptable to OSU, amend the Request for Proposal by issuing an Addendum. Envelopes, e-mails or faxes containing requests should be clearly marked as a Request for Clarification or Change and include the RFP Number and Title.

7.03 ADDENDA:

Only documents issued as Written Addenda by PaCS serve to change the Request for Proposal in any way. No other direction received by the Proposer, written or verbal, serves to change the Request for Proposal. PaCS will notify potential Proposers through publication of the Addenda on the OUS procurement website. If you have received a Request for Proposal you should consult the OUS procurement website, prior to Proposal submittal, to assure that you have not missed any Addenda. Proposers are not required to return Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by the Addendum into their Proposal. Failure to do so may, in effect, make the Proposal non-Responsive, which may cause the Proposal to be rejected.

7.04 PREPARATION AND SIGNATURE:

All Required Submittals must be Written or prepared in ink and signed in ink by an authorized representative with authority to bind the Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the Request for Proposal and all Attachments and Addenda to the Request for Proposal.

7.05 PUBLIC RECORD:

Upon completion of the Request for Proposal process, information in your Proposal will become subject records under the Oregon Public Records Law. Only those items considered a "trade secret" under ORS 192.501(2), may be exempt from disclosure. If a Proposal contains what the Proposer considers a "trade secret" the Proposer must mark each sheet of information as such. Only bona fide trade secrets may be exempt and only if public interest does not require disclosure.

7.06 SUBMISSION:

Proposals must be submitted in a sealed envelope and be delivered to the submittal location listed on the Request for Proposal cover sheet no later than the Proposal Due Date and Time. Proposer must specify on the outside of the envelope the Request for Proposal number, the Request for Proposal title and the Proposal Due Date and Time. **E-MAIL OR FACSIMILE PROPOSALS WILL NOT BE ACCEPTED.**

7.07 MODIFICATION:

Prior to submittal, Proposers should initial modifications or erasures in ink by the person signing the Proposal. After submittal but prior to the Proposal Due Date and Time, Proposals may be modified by submitting a Written notice indicating the modifications and a statement that the modification amends and supersedes the prior Proposal. After the Proposal Due Date and Time, Proposers may not modify their Proposal.

7.08 WITHDRAWALS:

A Proposer may withdraw their Proposal by submitting a Written notice to the Administrative Contact identified in this Request for Proposal prior to the Proposal Due Date and Time. The Written notice must be on the Proposer's letterhead and signed by an authorized representative of the Proposer. The Proposer, or authorized representative of the Proposer, may also withdraw their Proposal in person prior to the Proposal Due Date and Time, upon presentation of appropriate identification and evidence of authority to withdraw the Proposal satisfactory to OSU.

7.09 LATE SUBMITTALS:

Proposals and Written notices of modification or withdrawal must be received no later than the Proposal Due Date and Time. OSU may not accept or consider late Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120.

7.10 PROPOSAL OPENING:

Proposals will be opened immediately following the Proposal Due Date and Time at the Submittal Location. Proposer may attend the Proposal opening. Only the names of the Proposers submitting Proposals will be announced. No other information regarding the content of the Proposals will be available.

7.11 PROPOSALS ARE OFFERS:

The Proposal is the Proposer's offer to enter into a Contract pursuant to the terms and conditions specified in the Request for Proposal, its Attachments, and Addenda. The offer is binding on the Proposer for one hundred twenty (120) days. OSU's award of the Contract constitutes acceptance of the offer and binds the Proposer. The Proposal must be a complete offer and fully Responsive to the Request for Proposal.

7.12 CONTINGENT PROPOSALS:

Proposer shall not make its Proposal contingent upon OSU's acceptance of specifications or contract terms that conflict with or are in addition to those in the Request for Proposal, its Attachments, or Addenda.

7.13 RIGHT TO REJECT:

OSU may reject, in whole or in part, any Proposal not in compliance with the Request for Proposal, Attachments, or Addenda, if upon OSU's Written finding that it is in the public interest to do so. OSU may reject all Proposals for good cause, if upon OSU's Written finding that it is in the public interest to do so. Notification of rejection of all Proposals, along with the good cause justification and finding of public interest, will be sent to all who submitted a Proposal.

7.14 AWARDS:

OSU reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof. OSU reserves the right to delete any item from the award when deemed to be in the best interest of OSU.

7.15 LEGAL SUFFICIENCY REVIEW:

Prior to execution of any Contract resulting from this Request for Proposal, the Contract may be reviewed for legal sufficiency by a qualified attorney for OSU pursuant to the applicable Oregon Revised Statutes and Oregon Administrative Rules. Legal sufficiency review may result in changes to the terms and conditions specified in the Request for Proposal, Attachments, and Addenda.

7.16 PROPOSAL RESULTS:

A notice of intent to award containing the Proposal results will be issued to all Proposers. The Proposal file will be available for Proposer's review during the protest period at the PaCS Department. Proposers must make an appointment with the Administrative Contact to view the Proposal file. After the protest period, the file will be available by making a Public Records Request to OSU.

7.17 PROPOSAL PREPARATION COST:

OSU is not liable for costs incurred by the Proposer during the Request for Proposal process.

7.18 PROPOSAL CANCELLATION:

If a Request for Proposal is cancelled prior to the Proposal Due Date and Time, all Proposals that may have already been received will be returned to the Proposers. If a Request for Proposal is cancelled after the Proposal Due Date and Time or all Proposals are rejected, the Proposals received will be retained and become part of OSU's permanent Proposal file.

7.19 PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD:

Any Proposer who feels adversely affected or aggrieved may submit a protest within seven (7) calendar days after OSU issues a notice of intent to award a Contract. The protest must be clearly identified as a protest, identify the type and nature of the protest, and include the Request for Proposal number and title. The rules governing protests are at OAR 580-061-0145.

ATTACHMENT A
TERMS AND CONDITIONS FOR SOFTWARE PURCHASES

1. DEFINITIONS.

"Authorized Representative" means a person representing a party to this Contract who is authorized to make commitments and decisions on behalf of the party regarding the performance of this Contract. Contractor's Authorized Representative is the person so identified in Exhibit F. OSU's Authorized Representative is the person so identified in Exhibit G.

"Confidential Information" is defined in Section 14.10.

"Contract" means the entire written agreement between the parties, including but not limited to the Invitation to Bid ("ITB") or Request for Proposal ("RFP") and its specifications, terms and conditions; solicitation addenda, if any; and the purchase order or price agreement document; and all terms and conditions contained herein.

"Contractor" means a person or organization with whom OSU has contracted for the provision of goods or Services pursuant to this Contract.

"Contractor Intellectual Property" means any intellectual property, other than COTS Software, that is owned by Contractor and developed independently from the Services.

"COTS Software" means commercial off-the-shelf software that Contractor delivers to OSU pursuant to the Statement of Work.

"Deliverables" means all items that Contractor is required to deliver to OSU under this Contract, including Developments.

"Delivery Schedule" means the schedule set forth in the Statement of Work that includes the completion date of each Milestone and the delivery date for each Deliverable.

"Developments" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor (either alone or with others) pursuant to the Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Developments shall not include any COTS Software, Third Party Intellectual Property or Contractor Intellectual Property.

"Documentation" means all documents, including documents that are Deliverables described in the Statement of Work and includes, but is not limited to, any and all operator's and user's manuals, training materials, guides, commentary, listings and other materials for use in conjunction with and for the operation of the System and its components that are to be delivered by Contractor under this Contract.

"Effective Date" means the latter of the date of the last signature on the Contract or the date set out in the Contract as the Effective Date.

"Final Acceptance" is defined in Section 2.5.

"Software Retention Amount" is defined in Section 6.2.2.

"Intellectual Property Rights" are defined in Sections 14.1 to 14.5.

"Key Persons" means Contractor's Authorized Representative, the Project Manager and all other Contractor personnel designated as key persons.

"Maximum Not-To-Exceed Compensation" means the maximum amount that can be paid by OSU to the Contractor over the term of the Contract without an amendment.

"Milestone" means a specific group of tasks or Deliverables identified as a Milestone in the Statement of Work.

"OARS" means the Administrative Rules adopted by the Oregon State Board of Higher Education and OSU.

"Operating Environment" means the hardware, programming languages, software, including, but not limited to, operating system software, the system architecture and firmware necessary for the System to operate in accordance with its specifications.

"ORS" means the Oregon Revised Statutes.

"OSU" means the State of Oregon, acting by and through the State Board of Higher Education, on behalf of Oregon State University. "OSU" also means other parties to the Contract if the purchase is being made under a cooperative agreement.

"Project Manager" means Contractor's representative who manages the processes and coordinates the Services with OSU's Authorized Representative to ensure delivery of the Deliverables and completion of Milestones.

"Proposal" means Contractor's proposal in response to the RFP or ITB.

"Schedule of Deliverables" means a document that describes each Deliverable, measurable attributes of each Deliverable, Milestones with identification of the Services that are associated with them and a planned completion date for each Milestone and Deliverable.

"Services" means all services to be performed under this Contract.

"Services Retention Amount" is defined in Section 6.2.1.

"Statement of Work" means the Schedule of Deliverables, the payment schedule, and any other items as agreed by the parties.

"System" means the sum total of the Developments, the Contractor Intellectual Property, the Third Party Intellectual Property, the COTS Software and the hardware described in the Statement of Work that comprise the information system that Contractor will develop and implement under this Contract.

"Third Party Intellectual Property" means any intellectual property owned by parties other than OSU or Contractor.

"Warranty Period" means the period that begins on the date of Final Acceptance, and ends 180 calendar days after the date of Final Acceptance.

2. SCOPE OF SERVICES.

2.1 Performance and Delivery.

2.1.1 Contractor shall perform the Services as set forth in the Statement of Work, in accordance with the Delivery Schedule and the standards and methodologies set forth in the Statement of Work.

2.2 Responsibilities of OSU. If this Contract requires OSU to provide any goods or services, and OSU fails to provide the requisite quality or quantity of such goods or services, or fails to provide such goods or services in a timely manner, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by OSU's failure.

2.3 Delivery and Review of Deliverables

2.3.1 Contractor shall deliver Deliverables and complete Milestones as set forth in the Statement of Work by no later than the date or dates set for delivery in the Statement of Work. Interim delivery dates, both critical and non-critical, are set forth in the Statement of Work and are subject to OSU performing its responsibilities in a timely manner.

2.3.2 Contractor shall provide written notice to OSU upon delivery of a completed Deliverable to OSU. By no later than (i) 15 days after receipt of such notice, or (ii) the date set forth in the Delivery Schedule for OSU's review, OSU shall determine whether the Deliverable meets the specifications and performance standards set forth in the Statement of Work. With respect to any Deliverables that are susceptible to acceptance testing, OSU shall conduct interim acceptance testing as set forth in Section 2.4.1. If OSU determines that the Deliverable meets, in all material respects, the specifications and performance standards, OSU shall notify Contractor of OSU's acceptance.

2.3.3 If OSU determines that a Deliverable does not meet, in all material respects, the specifications or performance standards, OSU shall notify Contractor in writing of OSU's rejection of the Deliverable, and describe in reasonable detail in such notice OSU's basis for rejection of the Deliverable. Upon receipt of notice of non-acceptance, Contractor shall, within a 15-day period, modify or improve the Deliverable at Contractor's sole expense to ensure that the Deliverable meets, in all material respects, such specifications or performance standards, and notify OSU in writing that it has completed such modifications or improvements and re-tender the Deliverable to OSU. OSU shall thereafter review the modified or improved Deliverable within 15-days of receipt of the Contractor's delivery of the Deliverable. Failure of the Deliverable to meet in all material respects, the specifications and performance standards after the second set of acceptance tests shall constitute a default by Contractor. Upon such default, OSU may either (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this section 2.3.3, or (ii) notify Contractor of such default and instruct Contractor to cease work on the Deliverable, in which case Contractor shall refund to OSU all amounts paid by OSU related to such Deliverable. Such refund shall be in addition to, and not in lieu of, any other remedies OSU may have for Contractor's default.

2.4 Acceptance Testing.

2.4.1 Interim Acceptance Testing. In the event the Statement of Work contemplates acceptance testing of any Deliverable prior to the delivery of the complete System for acceptance testing as set forth in this Section 2.4, OSU and Contractor shall conduct such interim acceptance testing as set forth in the Statement of Work. Notwithstanding the preceding sentence, however, when the complete System is delivered, the provisions of Sections 2.4.2, 2.4.3 and 2.5 will be applicable to OSU's acceptance testing of the entire System, and OSU's acceptance of a Deliverable pursuant to any interim acceptance testing as set forth in the Statement of Work shall not be construed as a waiver by OSU of its right to decline to accept the System if the System fails System acceptance testing as set forth in this Section 2.4.

2.4.2 Initial System Testing. Upon completion of the System, Contractor shall install the System in the Operating Environment at the location set forth in the Contract. OSU will test the entire System by using it in off-line parallel processing of OSU's operational data in order to determine if it meets in all material respects, the specifications and requirements set forth in this Contract. If the System, fails to conform to or perform in accordance with those requirements, OSU will notify Contractor, in writing, specifying the manner in which it fails to comply. Upon receipt of such written notice, Contractor shall correct any such failure within ten (10) business days from the date of receipt of OSU's notice or such date as OSU shall specify in its notice, and shall resubmit the corrected System to OSU for retesting in accordance with this Section 2.4.2, all at no additional charge to OSU.

2.4.3 Acceptance Period. Upon completion of Initial System Testing, OSU shall use the System for the transformation and processing of System data in a live production environment for a minimum period of ninety (90) days. At the end of such ninety (90) day period, there shall be no known unresolved or uncorrected program errors, as communicated in writing from OSU to Contractor. For the purpose of this Section 2.4.3, "unresolved or uncorrected program errors" are programming errors that prevent the System from meeting the functional specifications and requirements of this Contract. If the System materially fails to conform to or perform in accordance with those requirements, OSU will notify Contractor, in writing, specifying in reasonable detail the manner in which it fails to comply. Upon receipt of such written notice, Contractor shall correct any such failure within five (5) business days from the date of receipt of OSU's notice or such date as OSU shall specify in its notice, and shall resubmit the System to OSU for reevaluation, all at no additional charge to OSU. Thereafter, if the System fails to conform or perform as required, OSU may allow Contractor to continue to correct the System or OSU may declare a material breach of this Contract by Contractor.

2.5 Final Acceptance. "Final Acceptance" of the System will occur when, in OSU's sole determination, the following events have occurred or conditions exist:

2.5.1 OSU has notified Contractor that all System acceptance tests required pursuant to Section 2.4 have been successfully completed for the System;

2.5.2 All System database inventories and configuration files are complete and operating correctly;

2.5.3 All items of System Documentation are complete, inventoried and accepted by OSU. Contractor shall provide all text Documentation both in hard copy and in an electronic format approved by OSU;

2.5.4 All Documentation, Software, configuration data, and System configuration are complete and are stored and controlled under a configuration management system acceptable to OSU; and

2.5.5 Contractor has delivered all source code and Documentation for the Developments to OSU in accordance with the terms of the Contract.

2.6 Warranty Period: System Maintenance.

2.6.1 Warranty Period. During the Warranty Period, Contractor will, at no charge to OSU, furnish such materials and services as shall be necessary to correct any defects in the System and maintain the System in good working order in accordance with the warranties, requirements and response times provided in the Contract.

2.6.2 Long Term Maintenance. Contractor shall, within 30 days of Final Acceptance and in accordance with the Delivery Schedule, deliver to OSU a proposed maintenance agreement that provides for maintenance of the System for a period of 3 years from the expiration of the Warranty Period for negotiation by Contractor and OSU. The proposed maintenance agreement shall comply in all material respects with the requirements for maintenance and support set out in the RFP or ITB.

3. CHANGE CONTROL PROCEDURES.

3.1 Written Change Requests. Either OSU or Contractor may request a change to this Contract, including all Exhibits hereto, by submitting a written change request describing the change requested. OSU's and Contractor's Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

3.2 Analysis of Change Requests; Change Orders. The party to whom the written change request has been submitted, if it has not been rejected pursuant to Section 3.1, shall analyze such change request to determine the effect that the implementation of the change will have on the Statement of Work. If Contractor requests to make changes in its design or implementation of the System to enable the System to meet the requirements of the Statement of Work, such changes will be made at no cost to OSU, unless such changes are due to the failure of OSU or its agents to perform its or their responsibilities in a timely manner. If any change is approved, the party that submitted the request for the change shall prepare a written change order, detailing all modifications to the scope, price, Delivery Schedule or other terms (the "Change Order"). A Change Order at a minimum shall contain the following information:

3.2.1 The date of issuance of the Change Order;

3.2.2 A detailed description of the Services to be performed under the Change Order;

3.2.3 The particular specification or matter set forth in the applicable Statement of Work which will be altered and the precise scope of that alteration;

3.2.4 The cost of the Services to be performed pursuant to the Change Order; and

3.2.5 The cumulative cost of all Change Orders previously issued. A Change Order shall alter only that portion of the Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Contract. No Services shall be performed pursuant to the Change Order and no payment shall be made on account of the Change Order until the Change Order is fully executed and approved as set forth in Section 6.4.

3.3 Payments. Subject to the foregoing Sections of this Article 3 and performance of the Services, OSU shall pay for Services performed pursuant to a Change Order in accordance with the acceptance and payment procedures set forth in this Contract.

4. CONTRACTOR'S PERSONNEL

4.1 Project Manager. Contractor shall designate one of the Key Persons as Project Manager for the Services. The Project Manager shall be familiar with OSU's business operations and objectives, shall perform the Services in accordance with the warranties set forth in Section 15 of this Contract. The Project Manager will participate with OSU in periodic review sessions and will provide at OSU's request detailed progress reports that identify completed tasks and the status of the remaining Services.

4.2 Contractor's Employees and Subcontractors. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by OSU. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in Section 15 of this Contract. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of OSU.

4.3 Key Persons. Contractor acknowledges and agrees that OSU selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's Key Persons. Contractor's Key Persons shall not delegate performance of their powers and responsibilities they are required to provide under this Contract to another Contractor employee(s) without first obtaining the written consent of OSU. Further, Contractor shall not re-assign or transfer the Key Persons to other duties or positions such that the Key Persons are no longer available to provide OSU with their expertise, experience, judgment, and personal attention, without first obtaining OSU's prior written consent to such re-assignment or transfer, which OSU shall not unreasonably withhold. Notwithstanding the foregoing, Contractor may replace Key Persons without OSU's consent in the event any Key Persons are no longer available due to death, illness or termination of employment with Contractor. In the event Contractor requests that OSU approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons due to death, illness or termination of employment with the Contractor, OSU shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Persons. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced, and shall perform the Services in accordance with the warranties set forth in Section 15. Any replacement personnel approved by OSU shall thereafter be deemed a Key Person for purposes of this Contract. Contractor shall not charge OSU and OSU shall not pay for any proposed replacement Key Person while such replacement acquires the necessary skills and project knowledge to proceed with the Services required hereunder; however, such period of non-charge may not exceed twenty-eight (28) calendar days, but shall last for a minimum of fourteen (14) calendar days, after which time OSU shall pay for such Key Person if Contractor demonstrates to OSU's satisfaction that such replacement has acquired the necessary skills and project knowledge to proceed with the Services required hereunder.

5. AMENDMENTS: The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of OSU.

6. PAYMENT.

6.1 Payment for COTS Software. Subject to Sections 6.2 and 6.4, OSU shall pay Contractor for COTS Software delivered under this Contract upon OSU's acceptance of the COTS Software/Final Acceptance, in the amount set forth in the Statement of Work for the COTS Software.

6.2 Retention Amount.

6.2.1 Retention Amount for Services. OSU shall in all events be permitted to hold back an amount (the "Services Retention Amount") of not more than ten percent (10%) of any amount that is payable by OSU to Contractor, other than amounts attributable to the license of COTS Software, if any. OSU shall pay the then accrued Services Retention Amount to Contractor within thirty (30) days following Final Acceptance.

6.2.2 Retention Amount for COTS Software. OSU shall in all events be permitted to hold back an amount (the "Software Retention Amount") of not more than ten percent (10%) of any amount payable to Contractor pursuant to Section 6.2.1 for COTS Software. OSU shall pay the accrued Software Retention Amount for the applicable item of COTS Software within 30 days of OSU's acceptance of the COTS Software according to acceptance criteria and processes set forth in this Contract/Final Acceptance.

6.3 Expenses. OSU will not pay any expenses incurred by Contractor during the completion of the Services.

6.4 Invoices. OSU shall pay Contractor not more than once each month upon Contractor's submission of a detailed invoice that sets forth the Services performed and goods accepted by OSU. Such invoices shall comply with the requirements of Sections 6.1, 6.2, and 6.3 and shall describe all goods delivered and all Services performed with particularity and by whom they were performed, including name and job title, reference to the specific activity in the Statement of Work, number of hours spent completing the Services, and shall itemize and explain all expenses for which reimbursement is claimed. Contractor shall request payment only for goods or Services that represents completion of specific Milestones or Deliverables. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall submit invoices to OSU's Authorized Representative. OSU will have the right to review each such invoice for compliance with the requirements of this Section 6.4 and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462.

6.5 Limit on Payments. Contractor shall not submit invoices for, and OSU shall not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Contract, pursuant to Section 3, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or goods delivered before the Effective Date or after termination of this Contract, as it may be amended from time to time, in accordance with its terms.

6.6 CASH DISCOUNT: If OSU is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

7. PERFORM ALL SERVICES.

7.1 Contractor shall perform all Services as an independent contractor. Although OSU reserves the right to evaluate the quality of the completed performance, OSU cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

7.2 Declaration and Certification. Contractor by execution of this Contract declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel who will perform Services under this Contract, and (ii) in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Services under this Contract. Contractor also declares and certifies by execution of this Contract that it is not an "officer," "employee," or "agent" of OSU, as those terms are used in ORS 30.265.

7.3 Responsible for Taxes. Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, OSU will not withhold from such compensation and payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

8. ORDER OF PRECEDENCE: OSU may also provide "special terms and conditions" elsewhere in the Contract which apply only to this Contract. Whenever possible, all terms and conditions are to be integrated. In the event of a conflict between these Terms and Conditions and "special terms and conditions", the "special terms and conditions" take precedence, unless the Terms and Conditions in question are required by law. In the event of any other conflict: 1) the special terms and conditions, 2) these Terms and Conditions, 3) the ITB or RFP, and 4) the proposal or response thereto shall be interpreted in the foregoing order of precedence. By signing this Contract, the Contractor agrees that, in the event of a conflict, all the terms and conditions of this Contract supersede all preprinted terms and conditions on any forms used by the Contractor.

9. WAIVER: Failure of OSU to enforce any provision of this Contract shall not constitute a waiver or relinquishment by OSU of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

10. SUCCESSORS.

10.1 Successors and Assigns. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

10.2 No Third-Party Beneficiaries. 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 persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

11. COMPLIANCE WITH LAW GENERALLY. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. 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) Sections 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) all regulations and administrative rules established pursuant to the foregoing laws; and (x) 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. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279.545(4)), recycled PETE products (as defined in ORS 279.545(5)), and other recycled products (as "recycled product" is defined in ORS 279.545(6)).

12. DISPUTE RESOLUTION.

12.1 Litigation. Any claim, action, suit, or proceeding (collectively, "Claim") between OSU (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 12.1.

12.2 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to **principles of conflict of laws.**

13. PAYMENT OF CONTRACTOR'S OBLIGATIONS: Contractor agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the provision of the Services provided in this Contract; pay all contributions or amounts due the industrial accident insurance provider from such Contractor incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the state on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate OSU official may pay such claim and charge the amount of the payment against funds due or to become due to the Contractor under this Contract. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety, if any, of obligations with respect to any unpaid claims.

14. ORIGINAL WORKS.

14.1 In the event that a Development created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Development, and to authorize others to do the same on OSU's behalf.

14.2 In the event that a Development created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on OSU's behalf and in the name of OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Development, and to authorize others to do the same on OSU's behalf.

14.3 Contractor Intellectual Property. In the event that a Deliverable is Contractor Intellectual Property Contractor hereby grants to OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on OSU's behalf.

14.4 Third Party Works. In the event that a Deliverable is Third Party Intellectual Property, Contractor shall secure on OSU's behalf and in the name of OSU, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on OSU's behalf.

14.5 COTS Software. OSU rights in the COTS Software shall be as set forth in the end user license agreements between OSU and the licensor of such COTS Software, which are attached hereto as Exhibit H.

14.6 Further Assurances. Contractor shall execute any instruments and do all other things reasonably requested by OSU (both during and after the term of this Contract) in order to vest more fully in OSU any and all ownership rights in those items hereby transferred by Contractor to OSU. In the event OSU is unable, after reasonable effort, to secure Contractor's signature on any copyright registrations or documents or instruments necessary to evidence OSU's ownership rights in, or to evidence the transfer to OSU of ownership rights in, the Developments or other property, for any reason whatsoever, Contractor hereby irrevocably designates and appoints OSU and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection thereon with the same legal force and effect as if executed by Contractor.

14.7 Disputes and Disclosures. In any dispute over ownership rights, Contractor shall have the burden of proving prior or independently developed rights in copyrightable code by clear and convincing proof.

14.8 No Rights. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by OSU. Nothing in this Contract shall be construed as granting to or conferring upon OSU any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

14.9 Competing Services. Subject to the provisions of this Article 14, and Contractor's obligations with respect to Confidential Information, as defined in Section 14.10, nothing in this Contract shall preclude or limit in any way the right of Contractor to: (i) provide the services similar to those contemplated in this Contract, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables. Each party shall be free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

14.10 Confidential Information. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to OSU. Any and all information of any form obtained by and clearly marked confidential, or identified as confidential in a separate writing as confidential that OSU provides to Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of OSU ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by OSU to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than OSU without the obligation of confidentiality, (e) is disclosed with the written consent of OSU, or; (f) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

14.10.1 Non-Disclosure. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to OSU hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist OSU in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise OSU immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Contractor will at its expense cooperate with OSU in seeking injunctive or other equitable relief in the name of OSU or Contractor against any such person. Contractor agrees that, except as directed by OSU, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at OSU's request, Contractor will turn over to OSU all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.10.2 Injunctive Relief. Contractor acknowledges that breach of this Section 14.10, including disclosure of any Confidential Information, will give rise to irreparable injury to OSU that is inadequately compensable in damages. Accordingly, OSU may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of OSU and are reasonable in scope and content.

15. GENERAL REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to OSU that:

15.1 Contractor has the power and authority to enter into and perform this Contract;

15.2 This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

15.3 Contractor will, at all times during the term of this Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services;

15.4 Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order.

15.5 The Contractor Data and Tax Certification in the form attached hereto as Exhibit D and the Certification Statement For Independent Contractor in the form attached hereto as Exhibit E, if applicable, are true and accurate as of the Effective Date, and Contractor will notify OSU in writing if any such data or certifications change during the term of this Contract such that the attached Exhibits D or E, if applicable, are no longer true and accurate

15.6 Contractor's Performance Warranties. Contractor represents and warrants to OSU that:

15.6.1 Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in this Contract in accordance with the standards prevalent in Contractor's profession.

15.6.2 Through the expiration of the Warranty Period, all Deliverables delivered by Contractor to OSU, and the System as a whole, shall materially conform to the specifications, capabilities, characteristics, functions and performance standards set forth in this Contract, including the Statement of Work and any Documentation provided by Contractor, shall be free from error or defect that materially impairs their use, and shall be free from material defects in materials, workmanship and design.

15.6.3 Except as otherwise provided in this Contract, all Deliverables supplied by Contractor to OSU shall be transferred to OSU free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.

15.6.4 When used as authorized by this Contract, no Deliverable delivered by Contractor to OSU infringes, nor will OSU's use, duplication, or transfer of such Deliverables infringe, any copyright, patent, trade secret, or other proprietary right of any third party.

15.6.5 Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or OSU and no third party has any right, title or interest in any Deliverables supplied to OSU under this Contract.

15.6.6. WARRANTIES EXCLUSIVE DISCLAIMERS. THE WARRANTIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT OSU'S USE OF THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE.

16. LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST DATA OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

17. SEVERABILITY: If any provisions of this Contract are declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

18. INDEMNITY, RESPONSIBILITY FOR DAMAGES:

18.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and OSU and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract; provided that Contractor shall have no obligation to indemnify OSU or the State of Oregon from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of OSU or the State of Oregon, and their officers, employees or agents.

18.2 IP Indemnity. In addition to and without limiting the generality of Section 18.1, Contractor expressly agrees to, indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables or the System or use thereof infringe any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party's Intellectual Property Rights, Contractor may upon receipt of OSU's prior written consent, which OSU shall not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for OSU the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the System continues to function in material conformance with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract, and OSU may pursue any rights and remedies available to it under this Contract, including termination. Contractor shall not be liable under this section for any claim for infringement based solely on the following:

- A. Contractor's compliance with any designs, specifications, or instructions provided by OSU or by a third party acting on OSU's behalf;
- B. OSU's modification of the Deliverables or the System other than as set forth in this Contract, the Deliverables' or System's specifications, or without the written permission of Contractor;
- C. Use of the Deliverables or the System in a manner other than as provided for in this Contract, their specifications, or as authorized in writing by Contractor;
- D. Use of the Deliverables or the System in combination, operation, or use with other products in a manner that does not comply with their specifications, not specified by Contractor or of which Contractor has not approved in writing.

18.3 Control of Defense and Settlement. Contractor's obligation to indemnify OSU as set forth in Sections 18.1 and 18.2 is conditioned on OSU providing to Contractor prompt notification of any claim or potential claim of which OSU becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 18.1 or Section 18.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

19. INSURANCE.

19.1 Workers' Compensation Insurance. All employers, including Contractor, that employ subject workers who provide Services under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

19.2 Professional Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Contract, professional liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000, for each claim, incident or occurrence this is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

19.3 General Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Contract, general liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000, for each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

19.4 Automobile Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Contract, automobile liability insurance with a combined single limit, or the equivalent, of not less than the amount required under the Oregon Financial Responsibility Law (ORS 806.060 through ORS 806.115) for each accident for bodily injury and property damage, including coverage for the business use of owned, hired or non-owned vehicles, as applicable.

19.5 Additional Insureds. Each of the insurance policies that Contractor obtains pursuant to this Article 19 shall provide that the State of Oregon, OSU and their divisions, officers and employees are additional insureds under the policy, but only with respect to the Services that Contractor will provide under this Contract.

19.6 Notice of Cancellation or Change. Contractor shall not cancel, cause a material change in, reduce its limits for or omit or intend not to renew the insurance coverage required under this Contract without thirty (30) calendar days' prior written notice from Contractor or its insurers to OSU.

19.7 Certificates of Insurance. As evidence of the insurance coverage required under this Contract, Contractor shall furnish acceptable insurance certificates to OSU before commencing the Services and annually thereafter. The certificates shall specify all of the parties who are additional insureds and shall indicate all deductible amounts or retention's for all self-insurance. Insuring companies shall be authorized to sell insurance in the State of Oregon. Contractor shall be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance.

20. SAFETY AND HEALTH REQUIREMENTS: Services supplied under this Contract shall comply with all federal Occupational Safety and Health Admin. (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division.

21. ACCESS TO RECORDS: Contractor shall maintain books, records, documents, and other evidence and 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 the Contract. The Oregon State Board of Higher Education, OSU, Oregon Secretary of State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for three years from the date of Contract expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of the Contract and for any commitments or expenditures in excess of amounts authorized by OSU.

22. TERMINATION: This Contract may be terminated at any time by mutual consent of both parties, or by OSU at its discretion. If sufficient funds are not provided in future legislatively approved budgets of OSU (or from applicable federal, state or other sources) to permit OSU, in the exercise of its reasonable administration discretion, to continue this Contract, or if OSU or the program from which this Contract was executed is abolished, OSU may terminate this Contract without further liability upon delivery of notice to Contractor. This Contract may also be terminated by OSU for default as set out in Section 23.1.

22.1 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to OSU all of OSU's property (including without limitation OSU's Confidential Information or any Deliverables for which OSU has made payment in whole or in part) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such OSU property is expressed or embodied at that time. Any property or Deliverable returned or delivered to OSU pursuant to this Section shall be provided without the warranties set forth in Section 15.6, unless, with respect to Deliverables, OSU has accepted the Deliverable pursuant to Section 2.3.

23. OSU'S REMEDIES FOR CONTRACTOR'S DEFAULT: In the event Contractor is in default under this Section, 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 under Section 22, (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.

23.1 Default by Contractor. Contractor shall be in default under this Contract if:

23.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

23.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within thirty (30) business days after delivery of OSU's notice or such longer period as OSU may specify in such notice; or

23.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of OSU's notice or such longer period as OSU may specify in such notice.

23.2 Default by OSU. OSU shall be in default under this Contract if:

23.2.1 OSU fails to pay Contractor any amount pursuant to the terms of this Contract, and OSU fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

23.2.2 OSU commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and OSU fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

23.3. 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. If it is determined for any reason that Contractor was not in default under Section 23.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 22.

23.4 Contractor's Remedies. In the event OSU terminates this Contract as set forth in Section 23.1, or in the event OSU is in default under Section 23.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 22, Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the hours worked but not yet billed with respect to each Deliverable, up to the not-to-exceed amount for the Deliverable set forth in the Statement of Work; authorized expenses incurred, less previous amounts paid and any claims which OSU has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 23.4, Contractor shall pay any excess to OSU upon written demand.

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

25. AWARD TO FOREIGN CONTRACTOR: If the amount of this Contract exceeds \$10,000 and 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 Secretary of State Corporation Division, all information required by those agencies relative to this Contract. OSU shall withhold final payment under this Contract until Contractor has met this requirement.

26. FUNDS AVAILABLE AND AUTHORIZED. Contractor shall not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon. OSU believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within OSU's biennial appropriation or limitation. Contractor understands and agrees that OSU's payment of amounts under this Contract is contingent on OSU receiving appropriations, limitations, or other expenditure authority sufficient to allow OSU, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

27. NOTICE: Any notice pursuant to this Contract shall be validly given if in writing and sent by registered or certified mail, postage prepaid, to the respective addressees of Contractor and OSU.

28. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations and declarations set forth Sections 2.3, 2.4, 2.5, 2.6, 6, 8, 9, 10, 12, 14, 15, 18, 21, 22, 23, 28.

29. DISCLOSURE OF SOCIAL SECURITY NUMBER. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR

125-020-0410(3), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.

30. NO PARTNERSHIP. This Contract is not intended, and shall not be construed, to create a partnership or joint venture between OSU and Contractor. Nothing in this Contract shall be construed to make OSU and Contractor partners or joint venture participants.

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

32. MOST FAVORED CUSTOMER. Contractor agrees to treat OSU as its most favored customer. Contractor represents that all of the provisions of this Contract are comparable to or better than the equivalent provisions being offered by Contractor to any of its other customers. If Contractor offers more favorable provisions to any customer during the term of this Contract, Contractor shall notify OSU of such provisions and make them applicable to this Contract as of the date the more favorable provision became effective as to any other customer of Contractor.

33. MERGER: THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**ATTACHMENT B
CERTIFICATIONS**

By signature on this certification the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

The undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Proposer and that Proposer is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

SECTION II. AFFIRMATIVE ACTION

The undersigned hereby certifies that they have not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts, pursuant to OAR 580-061-0030 (3).

SECTION III. COMPLIANCE WITH SOLICITATION

The undersigned agrees and certifies that they:

1. Have read, fully understands and agrees to be bound by the Request for Proposal and all Attachments and Addenda to the Request for Proposal; and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or Contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the Request for Proposal and the Contract; and
4. Has provided a correct Federal Employer Identification Number or Social Security Number with the Proposal.

SECTION IV. PERMISSIVE COOPERATIVE PROCUREMENTS

If Proposer is awarded a contract from this Request for Proposal, Proposer hereby (check one)

- agrees
 disagrees

to offer the resulting contractual terms and prices to other public institutions.

Authorized Signature: _____ Date: _____

Name (Type or Print): _____ Telephone:(_____)_____

Title: _____ Fax:(_____)_____

FEIN ID# or SSN# (required): _____ Email: _____

Company: _____

Address, City, State, Zip: _____

Construction Contractors Board (CCB) License Number (if applicable): _____

Business Designation (check one):

- Corporation Partnership LLC Sole Proprietorship Non-Profit

Minority, Women & Emerging Small Business (MWESB) Certified Firm: Yes No

If yes, Minority, Women & Emerging Small Business (MWESB) Certification Number: _____

**ATTACHMENT C
REFERENCES**

REFERENCE 1

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

REFERENCE 2

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

REFERENCE 3

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____
