

AGREEMENT

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

RECITALS

- A. University desires to acquire Vibrational Sum Frequency Generation Spectrometer ("Equipment") and associated hardware and software and related services.
- B. Contractor has extensive experience and expertise in Vibrational Sum Frequency Generation Spectrometers and is in the business of providing the same.
- C. University has issued an alternative procurement letter seeking a Vibrational Sum Frequency Generation Spectrometer, and Contractor was selected for the contract award.
- D. University and Contractor wish to enter into an Agreement whereby Contractor sells to University the Vibrational Sum Frequency Generation Spectrometer.

AGREEMENT

In consideration of the terms and provisions below, the parties agree as follows:

1. Definitions. As used in this Agreement:

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

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

2. Shipment.

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

2.2 Contractor will ship the Deliverables to the following address:

3. Installation of Equipment . (If Contractor installs Equipment, the following provisions will apply.)

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

3.2 Contractor shall begin performance of the work required under this Agreement upon execution of this Agreement and shall use its commercially reasonable efforts to complete the work and deliver the Equipment to University and fully and completely install it on or before _____20___. In no event shall the installation of the Equipment be completed by Contractor later than _____, 20____..

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

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

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

4. Acceptance of Equipment .

4.1 Contractor shall provide written notice to University upon full and complete installation of the Equipment. Within fifteen (15) calendar days after receipt of such notice, University shall perform tests to determine whether the Equipment meets the specifications and performance standards set forth in this Agreement. University agrees that its acceptance criteria shall be limited to the specifications or performance standards set forth in Exhibit A and Exhibit B, and shall not include the operation or performance of the Equipment in conjunction with any of University's existing equipment which does not constitute Deliverables.

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

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

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

4.5 Upon delivery of the Equipment to University, Contractor agrees that University shall have a license to use all Licensed Deliverables for the purpose of evaluating and testing the Equipment. Upon Final Acceptance of the Equipment by University, Contractor grants or transfers to University a license for all Licensed Deliverables as set forth in 8.2.

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

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

7. Compensation.

7.1 For the services performed by Contractor hereunder, University agrees to pay to Contractor the sum of _____ (Amount of Money) (\$###,###.##), payable as follows:

7.1.1 Upon execution of this Contract, Contractor may invoice University for ____% of the purchase price.

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

7.1.3 University shall pay invoices within forty-five (45) calendar days of receipt.

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

7.3 The total compensation paid under this Agreement shall not exceed _____.

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

8. Ownership.

8.1 With the exception of the Licensed Deliverables, which shall be licensed to University as provided in Section 8 .2, all Deliverables delivered to University hereunder shall become the sole and exclusive property of University, and Contractor hereby assigns all right, title and interest in such Deliverables to University upon delivery to University's facilities.

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

9. Term and Termination.

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

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

9.3 University may terminate this Agreement immediately upon written notice in the event that: (a) federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that any Deliverables or services to be provided by Contractor under this Agreement are no longer allowable or appropriate for purchase by University or are no longer eligible for the funding proposed for payment authorized by this Agreement; (b) University fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay Contractor for the services provided hereunder; (c) any license or certificate required by law or regulation to be held by Contractor to provide services under this Agreement is denied, revoked, or not renewed for any reason; (d) if Contractor becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (e) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by Contractor; or (f) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably to Contractor within ninety (90) calendar days. In the event of termination pursuant to this Section 9.4, University shall pay Contractor an equitable portion of the payments required under Section 7 for services actually performed by Contractor and Deliverables actually provided to University, but University shall have no further payment obligation to Contractor under this Agreement.

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

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

10. Representations and Warranties of Contractor.

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

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

10.3 Contractor represents that Contractor has the power and authority to enter into and perform this Agreement; that the execution, delivery and performance of this Agreement

have been duly and validly authorized by all necessary action on the part of Contractor; that this Agreement has been duly executed and delivered by Contractor and constitutes a valid, binding and enforceable obligation of Contractor except as the provisions of this Agreement may be rendered unenforceable by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws effecting creditor's rights generally or the application of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

10.4 Contractor represents that: (a) Contractor shall comply with all federal, state, and local laws, regulations, ordinances, and rules that, to its knowledge, are applicable to its activities and obligations under this Agreement; and (b) Contractor is not in arrears with respect to the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits.

10.5 Contractor warrants that the individual items comprising the Equipment shall be free from all defects in material and workmanship and will conform to the applicable specifications set forth on Exhibits A and B under normal use and service and when correctly maintained for the warranty periods set forth on Exhibit C with respect to each such item (the "Warranty"). Contractor shall repair or replace, at Contractor's sole option, any defective or nonconforming individual item comprising the Equipment. Contractor will pay expenses for travel by Contractor's personnel to University's facilities for warranty repair during the Warranty period. For items comprising the Equipment returned for repair that are not covered under warranty, Contractor's standard repair charges shall be applicable in addition to all shipping expenses. The warranty shall be null and void (i) upon any modification, alteration of the Equipment by any person or entity other than Contractor except for maintenance and basic troubleshooting by University personnel or (ii) if the Equipment is subjected to unusual physical, thermal or electrical stress, misuse, abuse, accident or negligence in use, storage or tampering.

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

11. Insurance.

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

11.2 Contractor shall secure at Contractor's own expense and keep in effect during the term of this Agreement a Commercial Auto Liability insurance policy with a minimum limit of \$1,000,000 per occurrence with an aggregate amount of \$2,000,000. Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a minimum financial rating of an AM Best rating of A- or higher. All

liability insurance will be arranged on an "occurrence" basis. No insurance will be allowed on a "claims made" basis.

11.3 Before the Agreement is executed by the University, Contractor must provide **both** of the following two documents to University:

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

12. INDEMNIFICATION.

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

12.2 INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 12.1, CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE DELIVERABLES INFRINGE ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY.

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

12.3 All obligations of Contractor to legally defend the University are subject to the limitations and conditions of ORS 180 et seq.

13. Confidentiality.

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

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

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

13.4 The confidentiality obligations imposed by this Section 13 shall not apply to: (a) information that now is or hereafter becomes part of the public domain through lawful means; (b) information developed by Contractor outside the scope of this Agreement; and (c) information subsequently and rightfully received by Contractor from third parties that does not relate to Contractor's performance under this Agreement.

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

14. Assignment; Delegation.

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

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

15. Independent Contractor.

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

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

16. Records Maintenance; Access.

16.1 Contractor shall maintain all fiscal records relating to the subject matter of this Agreement, and Contractor's performance hereunder, in accordance with Generally Accepted

Accounting Principles. Additionally, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance of its duties under this Agreement. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for minimum of five (5) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

17. Miscellaneous.

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

University:

Contracts Manager
720 E. 13th Ave. Suite 302
Eugene, OR 97401-3753
Fax: (541) 346-2425

With a copy to:

(Department Head)

(Department)
University of Oregon

(Address)
Eugene, OR 97403
Fax: (541) 346-_____

Contractor:

(Company Name)
Attention: _____
 Contact

(Address)

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

With a copy to:

(Company Name)
Attention: _____
 Contact

(Address)

(Address)

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

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

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

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

17.5 Approvals. The approval of the State of Oregon Department of Justice is required before any work may begin under this Agreement.

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

17.7 Funds Available and Authorized Payments. Contractor understands and agrees that Contractor's receipt of payment under this Agreement attributable to services performed under this Agreement after the last day of the current biennium is contingent upon University receiving from the Oregon Legislative Assembly (including but limited to its Emergency Board) appropriations, limitations, or other expenditure authority sufficient to allow University, in the exercise of its reasonable administrative discretion, to continue the compensation of Contractor under this Agreement. University shall not be liable to Contractor under this Agreement for work Contractor performs under any other agreement, or for any other agency, office, or department of the State of Oregon. University shall only pay for completed work that has been accepted by University pursuant to this Agreement.

17.8 Compliance with Applicable Law. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances that, to its knowledge, are applicable to its performance under this Agreement.

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

17.10 Tax Compliance Certification. Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4). The tax laws described in ORS 305.380(4) are those imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; 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

17.11 No Third Party Beneficiaries. University and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described herein as intended beneficiaries.

17.12 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, terrorism, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the Party obligated to perform, shall excuse the performance, except for the payment of money, by such Party for a period equal to any such prevention, delay or stoppage.

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

the economic, legal and commercial objectives of the invalid and unenforceable provision to the greatest extent possible.

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

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

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

17.17 Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations that by their nature would normally survive such termination or expiration.

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

[NEXT PAGE IS THE SIGNATURE PAGE]

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

UNIVERSITY

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

By: _____

Name: Catherine Susman

Title: Director, Purchasing and Contracting Services

Date: _____ 2011

CONTRACTOR

By (Sign) _____

Name (Print) _____

Title _____

Date _____

Exhibit A -Deliverables

The Deliverables consist of:

Exhibit B- Technical Specifications

Exhibit C—Warranty, Maintenance and Support