

EXHIBIT A
AGREEMENT

This Agreement ("Agreement") is entered into by the State Board of Higher Education, acting by and through the University of Oregon ("University"), and _____, a(n) _____ with its principal place of business at _____ ("Contractor"). University and Contractor are each "Party" and collectively "Parties".

RECITALS

- A University issued an alternative process media services, which closed on May 23, 2012.
- B Contractor submitted a response to the alternative process, and after completing the evaluation of all responses, University determined that Contractor was the successful respondent.
- C University and Contractor desire to enter into an agreement whereby Contractor will provide media services ("Work") as further described below.

AGREEMENT

In consideration of the above Recitals which are incorporated in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definition. As used in this Agreement, "Work" will mean those services and deliverables to be provided by Contractor as more particularly described in Section 3 below and **Exhibit A**.
2. Term & Termination.

2.1 The term of this Agreement will be for 1 year from the date of later execution of this Agreement below ("Initial Term").

2.2 This Agreement may be terminated by mutual written consent of both Parties. University may terminate this Agreement effective upon delivery of written notice to Contractor or at such later date as may be established by University under any of the following conditions: (a) federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that any Work 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) 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; (c) 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; (d) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they not exist, or as they may be amended, is filed by Contractor; or (e) 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, University will pay Contractor for Work actually performed, provided to and accepted by University, but University shall have no further payment obligation to Contractor under this Agreement.

2.3 If sufficient funds are not provided in future legislatively approved budgets of the Oregon University Systems (OUS) (or from applicable Federal, state, or other sources) to permit University in the exercise of its reasonable administrative discretion to continue this Agreement, or if OUS or the program for which this Agreement was executed is abolished, University may terminate this Agreement without further liability by giving Contractor not less than thirty (30) days written notice.

3. Scope of Work.

3.1 As more particularly set forth in **Exhibit A**, Contractor's Work will include

3.2 Contractor will begin performance of the Work upon notice to proceed from the _____ at the commencement of the Initial Term. Contractor will complete the Work in accordance with the timelines set forth in **Exhibit B**.

3.3 University considers the personnel listed in **Exhibit C** to be key personnel for the Work. Contractor will not replace such key personnel without the prior written consent of University, which consent will not be unreasonably withheld, conditioned or delayed.

3.4 To ensure effective communication, Contractor designates _____ as Contractor's Project Manager and Contractor's single point of contact in connection with the Work. University designates _____, as University's primary point of contact in connection with the Work.

3.5 University may request modifications to the Scope of Work by providing a written request to Contractor. If Contractor believes a modification requested by University will increase Contractor's costs under this Agreement or will result in a delay past the completion date(s) of the Work, Contractor, prior to performing the additional work, will promptly notify University of the proposed additional charge and any necessary modifications to the time line. 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. The Parties will negotiate the modification and any accompanying increase in cost. **NO MODIFICATIONS TO THE WORK WILL BE BINDING UPON UNIVERSITY UNTIL A WRITTEN AMENDMENT IS EXECUTED BY AUTHORIZED REPRESENTATIVES OF UNIVERSITY AND CONTRACTOR. ORAL APPROVALS OR OTHER INSTRUCTIONS BY UNIVERSITY PERSONNEL WILL NOT AMEND THIS AGREEMENT.**

3.6 University will 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 Work.

4.1 Contractor will provide Work in accordance with **Exhibit A** and **Exhibit B**.

4.2 After receipt of the Work, University will have a _____ calendar day evaluation period to accept or reject the Work. The timelines set forth in **Exhibit B** are inclusive of University's review time.

4.3 If any of the Work does not meet the requirements outlined in **Exhibits A and B**, University will provide written notice of non-acceptance to Contractor within the _____ day evaluation period, specifically identifying the deficiencies.

4.4 Upon receipt of notice of non-acceptance, Contractor will have _____ calendar days to revise, correct or otherwise modify the Work to address the deficiencies noted in University's non-acceptance. If the Parties agree that this is insufficient time to address all deficiencies, University and Contractor will mutually agree upon a time period for Contractor to satisfactorily address the deficiencies.

4.5 University and Contractor may also negotiate any other resolution mutually acceptable to the Parties.

4.6 Risk of loss and title will remain with Contractor until University's acceptance of the Work, including risk of loss in transit to University's facilities.

5. Invoicing and Payment.

5.1 Total amount payable under this Agreement for all of the Work will not exceed \$_____.

5.1.1 [Insert any interim payment or milestone payment information]

5.1.2 [Insert any interim payment or milestone payment information]

[Insert any other provisions as applicable]

5.2 Contractor's invoices will provide detailed listing of all Work performed, including all personnel performing the Work, dates of performance, Work elements/tasks performed and associated hours. Contractor will include with its detailed invoice a progress report that documents in bulleted detail the Work completed and accepted, milestones reached or percent of milestones complete; cumulative number of hours completed for each milestone and number of estimated hours remaining to complete each milestone; schedule delays caused by University, negotiated schedule adjustments, problems/issues/concerns/recommended

adjustments. Contractor will provide University with such other information as University may reasonably request.

5.3 In connection with the Work detailed in **Exhibit A**, Contractor will invoice University upon completion and acceptance by University.

5.4 University will pay invoices within forty-five (45) days of receipt of a detailed invoice, after acceptance of Work (where appropriate). All payments are subject to the limitations and conditions of OAR 580-061-0050.

6. Representations and Warranties of Contractor.

6.1 Contractor represents and warrants that (1) Contractor has the power and authority to enter into and perform this Agreement; (2) The individual signing for Contractor is authorized to execute this Agreement on behalf of Contractor; (3) This Agreement, when executed and delivered, will be a valid and binding obligation of Contractor, enforceable in accordance with its terms; and (4) Contractor's name, as it appears in this Agreement, is Contractor's legal name, as it will appear in the Contractor's W-9, and if Contractor is an entity rather than an individual that the entity named in this Agreement is validly existing and in good standing.

6.2 Contractor represents and warrants that the work under this Agreement will be performed in a good and workmanlike manner and in accordance with the highest professional standards.

6.3 Contractor will, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the work;

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

7. Miscellaneous Terms and Conditions.

7.1 Notices. All notices or other communications required or permitted by this Agreement must be in writing to the addresses listed below or such other addresses or numbers as the Parties may from time to time direct in writing. Any communications or notices will be considered delivered: upon actual receipt if delivered personally or an overnight delivery service or at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

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

With a copy to:

Contractor:

With a copy to:

7.2 Confidentiality

7.2.1 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.

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

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

7.2.4 The confidentiality obligations imposed by this Section will 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.

7.2.5 Contractor acknowledges that any records it discloses to University are subject to the provisions of the Oregon Public Records laws.

7.3 Non-Use of Names and Trademarks. No Party will, 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.

7.4 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 will 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 in this Agreement and expressly described in this Agreement as intended beneficiaries.

7.5 Indemnity. Contractor will be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from any act or omission of Contractor, its subcontractors, agents, or employees. Contractor will indemnify and hold harmless University and its governing board and their directors, officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the acts or omissions of Contractor or its subcontractors, officers, agents, or employees.

7.6 Indemnity for Infringement Claims. EXCEPT TO THE EXTENT ARISING FROM MATERIALS PROVIDED TO CONTRACTOR BY UNIVERSITY, WHICH MATERIALS ARE UTILIZED BY CONTRACTOR IN THEIR UNALtered FORM AND WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION CLAUSE REFERENCED IN SECTION 7.5, 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 WORK INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY The indemnity under this Section will not apply to the extent such alleged or actual infringement arises as a result of (i) modifications of such Work made by University or any party (other than Contractor) which were not approved by Contractor, or (ii) Contractor's compliance with any of University's designs, specifications or instructions. In the event that a court of competent jurisdiction determines in a final, nonappealable order that the Work is infringing in a manner for which Contractor is obligated to indemnify University pursuant to this Section, Contractor will, at its option, either (1) procure for University the right to continue using such infringing Work; (2) replace the infringing Work with a non-infringing item of like form, fit or function; or (3) modify the Work so that it no longer infringes.

7.7 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor will promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement. Contractor will demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Agreement.

7.8 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.

7.9 Approvals. The approval of the University of Oregon General Counsel may be required, before any Work may begin under this Agreement.

7.10 Independent Contractor Status. The service(s) to be rendered under this Agreement are those of an independent contractor. Contractor is not to be considered an agent or employee of University for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that University provides for

its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees and subcontractors during the performance of this Agreement.

7.11 Successors in Interest. The provisions of this Agreement will be binding upon and will inure to the benefit of the Parties to this Agreement, and their respective successors and assigns.

7.12 Dual Payment. Contractor will not be compensated for Work performed under this Agreement from any other department of University or agency of the state of Oregon.

7.13 Insurance. Contractor will secure at Contractor's expense and keep in effect during the term of this Agreement 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 will include personal and advertising injury liability and products. Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a minimum financial rating of an AM Best rating of A- or higher. All liability insurance will be arranged on an "occurrence" basis. No insurance will be allowed on a "claims made" basis. Self-insured retentions may be acceptable in lieu of the above requirements. Any self-insured retentions must be declared to and approved by the University. University may require Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

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

Upon request by University, Contractor will provide to University an endorsement from the insuring company, naming (using the following exact language) "**The State Board of Higher Education, acting by and through the University of Oregon, their officers and employees**" as additional insured.

7.14 Default. University may terminate by written notice of default (including breach of contract) to Contractor the whole or any part of this Agreement if: (a) Contractor fails to provide services called for by this Agreement within the time specified in this Agreement or any extension of this Agreement; or (b) Contractor fails to perform any of the other provisions of this Agreement, or fails to pursue the Work so as to endanger performance of this Agreement in accordance with its term and, after receipt of written notice from University, fails to correct such failures within 10 days or such longer period as University may determine at University's sole discretion.

7.15 Compliance with Applicable Law. Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to Work to be done under this Agreement. Contractor agrees to comply with all federal and state laws prohibiting

discrimination on the basis of race, sex, national origin, religion, age, sexual orientation, status as a veteran, or handicap, including the provisions of the American Disabilities Act, 42 US Code 12100 et seq. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations will not relieve Contractor of these obligations nor of the requirements of this Agreement.

7.16 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between University and Contractor will be brought and conducted solely and exclusively within a Circuit Court for the State of Oregon. However, if any claim, action, or suit must be brought in a federal forum, it will be brought and conducted exclusively in the United States District Court for the District of Oregon. In no event will any part of this Agreement be construed as a waiver by University of its sovereign and governmental immunities. BY EXECUTION OF THIS CONTRACT, CONTRACTOR CONSENTS TO IN PERSONAM JURISDICTION OF SUCH COURTS. Notwithstanding the foregoing, in no event will any part of this Agreement be construed as a waiver by the State of Oregon of its sovereign and governmental immunities or limits of liability enforceable in the courts of the State of Oregon.

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

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

7.19 Subcontracts and Assignments. Contractor will not subcontract, assign, or transfer any of its interest in this Agreement without obtaining prior written approval from University, which consent may be withheld by University in its sole discretion. As a condition to requesting prior written approval, Contractor must provide a written copy of any such proposed assignment or subcontract to University. University's consent to any assignment or subcontract will not relieve Contractor of any of its duties or obligations under this Agreement. Any assignment or subcontract in contravention of this Section will be null and void.

7.20 Family Educational Rights and Privacy Act. Contractor agrees to protect the confidentiality of student information and to comply with the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations, specifically 20 U.S.C. 1232G, 34 C.F.R. § 99.33, ORS 351.070 and OAR 571-020, with respect to any redisclosure of personally identifiable information from education records obtained from the University.

7.21 Conflict of Interest. Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Work under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest will be employed.

7.22 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).

7.23 Access to Records. Contractor will 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 for the performance of this Agreement. University, Oregon University System, Secretary of State of the State of Oregon, Federal Government, and their duly authorized representatives will have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Such books and records will be maintained by Contractor for six years from the date of Agreement expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Agreement and for any commitments or expenditures in excess of amounts authorized by University.

7.24 Ownership of Work Product. All work product of Contractor that results from this Agreement ("Work Product") is the exclusive property of University. University and Contractor intend that such Work Product be deemed "work made for hire" of which University will be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor by this Agreement irrevocably assigns to University all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor will execute such further documents and instruments as University may reasonably request in order to fully vest such rights in University. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

7.25 Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the Parties agree to attempt to substitute for any illegal, invalid, or unenforceable provision a valid or enforceable one, which achieves the economic, legal and commercial objectives of the invalid or unenforceable provision to the greatest extent possible.

7.26 Waiver. No waiver, consent, modification, or change of any term of this Agreement will 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, will be effective only in the specific instance and for the specific purpose set forth in such signed writing. Failure of either Party to enforce any provision of this Agreement will not constitute a waiver of the right to future enforcement of that or any other provision.

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

7.28 LIMITATION OF LIABILITIES. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 7.6, UNIVERSITY WILL NOT BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES UNDER THIS AGREEMENT, OR

(ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

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

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

7.31 COMMUNICATIONS STANDARDS AND GRAMMAR AND STYLE GUIDELINES. Contractor will conform to all applicable University Communications Standards and University Grammar and Style Guidelines available at (http://des.uoregon.edu/cp_grammar.html).

7.32 Federal Provisions. If this Agreement is federally funded in whole or in part, Contractor must comply with all applicable provisions of OMB Circular A-110. Further, if this Agreement is funded with American Recovery and Reinvestment Act (ARRA) funds or if Federal Funding Accountability and Transparency Act (FFATA) applies, Contractor is required to submit certain information to University. If Contractor fails to timely submit such required information, University reserves the right to cancel this Agreement or, if work has been performed, withhold payment until such required submittals have been received.

7.33 Counterparts. This Agreement may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Agreement), each of which will be considered an original and all of which together will constitute one and the same agreement. At the request of a Party, the other Party will confirm facsimile or electronically transmitted signature page by delivering an original signature page to the requesting Party.

7.34 Entire Agreement. This Agreement, together with all incorporated documents and exhibits attached to this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and merges all prior and contemporaneous communications with respect to such subject matter. This Agreement will 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. The Parties acknowledge and agree that this Agreement has been negotiated by the Parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

UNIVERSITY:
The State Board of Higher Education
acting by and through
the University of Oregon

CONTRACTOR:

By (Sign) _____

By: _____
Name: _____
Title: _____
Date: _____

Name (Print) _____
Title _____
Date _____

EXHIBIT A

SPECIFICATIONS FOR WORK

EXHIBIT B

WORK DELIVERABLE SCHEDULE

EXHIBIT C

KEY PERSONNEL