



**REQUEST FOR PROPOSAL
No. WY155773P**

Computer Hardware RFP

PROPOSAL DUE DATE AND TIME:
June 28, 2012 (2:00 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..... June 1, 2012
- Pre-Proposal Conference..... June 13, 2012 (10:00 am, PST)
- Deadline for Request for Clarification or Change..... June 20, 2012 (2:00 pm, PST)
- Proposal Due Date and Time..... June 28, 2012 (2:00 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 voluntary Pre-Proposal Conference will be held on Wednesday, June 13, 2012, 10:00 am, PST at Procurement and Contract Services, Conference Room 110B, 644 SW 13th St, Corvallis, OR, 97333. If you are unable to attend in person but wish to call in, a teleconference number will be available. Please contact the Administrative Contact listed in section 1.04 below for the teleconference number.

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: Will Young
Title: Procurement Analyst
Telephone: 541-737-3572
Fax: 541-737-2170
E-Mail: Will.Young@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. "Exhibits" 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:

OSU is seeking Responsive Responsible Proposers to submit Proposals for the provision of Computer Hardware. OSU intends to establish multi-year contracts with multiple manufacturers, directly or through resellers, for major brands of Computer Hardware as a result of this solicitation. "Computer Hardware" means desktop computers, notebook/laptop computers, servers, slate/tablets, thin client and similar products including repair and upgrade components for any of the above. OSU reserves the right during contract award or negotiations to include other computer equipment or components offered by the Contractor.

2.02 BACKGROUND:

OSU has had great success since 1998 in using its own contracts with multiple vendors to improve efficiencies and provide cost reductions in procurement of Computer Hardware. The current OSU contracts expire December 31, 2012 and the contracts resulting from this solicitation will replace the expiring contracts.

Usage of Computer Hardware contracts at OSU was \$5.9 million in FY 2011, \$4.1 million in FY 2010 and \$4.9 million in 2009. While usage of these contracts will not be mandatory, traditional usage has been high and we expect this to continue to be the case. Cooperative Usage of these contracts by other Oregon University System universities as well as other public agencies is also likely.

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 CONTRACT REQUIREMENTS

3.01 CONTRACT:

A draft Contract containing the statement of work and contractual terms and conditions is included at Exhibit A. **Proposers requiring changes to the general terms and conditions contained in sections 4-7 of the draft Contract should submit a request for change prior to the deadline for Request for Clarification or Change identified in section 1.01 of this RFP.**

OSU may negotiate the statement of work contained in sections 1-3 and related Attachments under the procedures of the Oregon University System Procurement and Contracting Code contained in OAR 580-061-0155. Proposers should submit as part of their Proposal, any contract language they feel necessary to include related specifically to the statement of work required under this RFP. Except for clauses related to the statement of work required under this RFP, the successful proposer shall be expected to sign a contract containing substantially the same terms and conditions as set forth in the draft Contract.

4.0 PROPOSER QUALIFICATIONS

4.01 MINIMUM QUALIFICATIONS:

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

- a. Proposer must be the manufacturer of or an authorized reseller for the Computer Hardware.
- b. Proposer must have at least ten (10) years of experience in providing Computer Hardware.
- c. Proposer has ordering and configuration through an internet web portal which can be customized specific to OSU needs and include contract pricing.
- d. Proposer must offer configure-to-order options for items in their catalog that include customizable components.

4.02 PREFERRED QUALIFICATIONS:

OSU will award additional points for Proposers able to meet the preferred qualifications below.

- a. Proposer has at least fifteen (15) years of experience in providing Computer Hardware to large organizations.
- b. Proposer has at least two (2) years of experience in providing Computer Hardware to higher education institutions.
- c. Proposer offers a warranty self-service program.

5.0 REQUIRED SUBMITTALS

5.01 QUANTITY OF PROPOSAL:

Submit one (1) original Proposal, seven (7) duplicate copies and one (1) duplicate copy in searchable pdf form (such that OSU will be able to copy from the document and paste into another document) on a CD or USB flash drive. 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. The information shall be prepared, identified and submitted in the order given below.

A. Proposer Qualifications:

Proposal documents detailing how the Proposer meets the qualifications outlined in Section 4 above including, at a minimum, the following:

1. **Brand Name** Proposer must state the brand name of Computer Hardware they are offering in the Proposal. Proposers that represent more than one brand name are not required to submit a separate Proposal for each brand name. Proposers are to include in their Proposal the brand

name of Computer Hardware that they represent and will sell under any resulting contract to OSU.

2. Experience Proposer should describe their experience in providing Computer Hardware.

- a. Include experience with providing Computer Hardware to other higher education institutions.

3. Agent Reseller Usage If Agent Resellers are proposed, Proposer must describe what products they will provide, how they are certified, how they are contractually bound to the Contract terms and conditions and how their sales will be accurately tracked and reported.

B. Contract Requirements:

Proposer shall include detailed information explaining how their Proposal meets the specific requirements identified in the listed sections of the Contract contained in Exhibit A to this RFP. Specifically, Contractor should at a minimum address the following:

1. Item 3.K. Warranties Proposers must provide information on included warranties, including any extended warranties available for an additional cost.

- a. **Warranty Self-Service Option** Proposers should define any programs available for warranty self-service.

2. Attachment B. Customer Service Proposer should describe their customer service plan for ensuring contract performance at the highest level.

- a. Proposer must identify by name and location the Designated Account Management Team.
- b. Proposers should include information regarding their proposed website portal and its features, as well as how often the web pricing and invoicing is audited to insure contract compliance.

3. Attachment C. Service Level Commitments OSU will use performance-reporting tools and service level agreements to measure performance under the Contract. Proposer must describe their ability to provide and commitment to maintain the service levels indicated in Attachment C. Additionally, Proposers must describe their procedures for resolving customer problems and complaints, including timelines and escalation measures. Proposers shall provide suggested REMEDIES in the event that the required service levels are not met.

4. Attachment D. Reporting Requirements Proposers should indicate their ability to provide the required reports listed in Attachment E. Proposers should also provide information on any enhanced reporting capabilities such as direct access to user generated reports via the website portal.

C. Exhibit B, Certifications, fully completed.

D. Exhibit C, References, fully completed.

E. Cost Proposal

Cost proposals will use a discount off list pricing methodology. Each Proposer shall submit a discount from the Manufacturer's List Price (MLP). Proposer will define what the MLP will be during the term of

the contract by identifying in their Proposal the URL on the Proposer's website at which OSU can find the MLP. The MLP MUST be publicly available and not protected by any passwords. The administrative fee and other cost related contract terms as described in the Contract in Exhibit A must be included in this discount.

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 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>
Proposer's qualifications relative to the minimum qualifications	150
Proposer's qualifications relative to the preferred qualifications	100
Proposal relative to contract requirements	300
Cost Proposal	<u>450</u>
Total	1000

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 Exhibits 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 Exhibits, 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 Exhibits, 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, Exhibits, 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 REVIEW:

Prior to execution of any Contract resulting from this Request for Proposal, the Contract may be reviewed a qualified attorney for OSU pursuant to the applicable OUS Internal Management Directive. Legal review may result in changes to the terms and conditions specified in the Request for Proposal, Exhibits, 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.

**EXHIBIT A
CONTRACT**

[Remainder of this page left intentionally blank]



OREGON STATE UNIVERSITY
CONTRACT FOR THE PURCHASE OF
Computer Hardware
CONTRACT NO. To Be Determined

This Contract is between the State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University ("OSU"), and [Contractor's name] ("Contractor").

WHEREAS, OSU competitively solicited for the goods outlined in this Contract under Request for Proposal number WY155773P entitled Computer Hardware and was selected as the Proposer best able to provide these goods; and

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

NOW, THEREFORE, OSU and Contractor agree as follows:

1. CONTRACT TERM AND TERMINATION:

A. CONTRACT TERM.

This Contract is effective for a period of two (2) years after the date of last signature. This Contract may be renewed, upon mutual agreement of the parties through written amendment, for five (5) additional, two (2) year terms based on the current terms and conditions.

B. TERMINATION.

- a. This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive sufficient legislative appropriations (or from applicable federal, state, or other sources) to permit OSU, in the exercise of its reasonable administrative discretion, to fulfill its obligations under this Contract, or if the OSU program for which this Contract was executed is abolished.
- b. This Contract may also be terminated by OSU for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. The rights and remedies of OSU provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. REMEDIES FOR CONTRACTOR'S DEFAULT.

- a. In the event Contractor is in default, 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: initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

2. ORDERS:

- A. As used in this Contract, "Customer" is any Department of OSU ("OSU Customer") or any Oregon public entity ("Other Customer"). [OSU reserves the right to modify applicable portions of the contract that refer to Other Customers based on the Contractor's Proposal]. This Contract is administered by OSU Procurement and Contract Services ("OSU PaCS").
- B. This Contract describes the terms by which Customers may purchase computer related equipment such as desktop computers, notebook/laptop computers, servers, slate/tablets, thin client and similar products including repair and upgrade components for any of the above ("Goods"). As part of the Goods, Contractor will also provide configure to order options for items in their catalog that include customizable components.

C. PROCESS.

- a. For OSU Customers:
 - i. OSU Customers will purchase Goods: (i) if under \$5,000, by using either an OSU Department purchase orders or with an OSU Procurement Card, or (ii) if over \$5,000 by using an OSU Banner purchase order.
 - ii. Orders from OSU Customers supplement this Contract and only provide terms information reasonably required to be supplied by this Contract to provide the details of a particular Order and do not otherwise vary the terms of this Contract.
- b. For Other Customers:
 - i. Other Customers may purchase Goods using their own purchase order forms.
 - ii. Contractor may, but is not required to, accept terms that are additional, different or conflict with this Contract ("Different Terms") in a purchase order from an Other Customer. If an Other Customer requests Different Terms, Contractor shall reach a written agreement with the Other Customer as to the effect of those Different Terms prior to accepting the Order.
 - iii. Each Order by an Other Customer constitutes an agreement separate and distinct from this Contract and any other Order. The only parties to Orders are the applicable Customer and Contractor.

- c. For Orders placed using a purchase order, the purchase order must specify all of the following to be effective:
 - i. Language stating that the Order is submitted under this Contract (and include the Contract reference number from the first page of the Contract).
 - ii. The specific Goods and quantity of each item ordered.
 - iii. The net price.
 - iv. The requested delivery schedule.
 - v. The delivery location(s).
 - vi. The invoicing address.
 - vii. The Customer's authorized representative and relevant contact information, including an e-mail address or fax number.
- d. For Orders placed using an OSU Procurement Card (and no purchase order), Contractor shall provide the information required to be in a purchase order to Customer via e-mail. For purpose of construing this contract, the confirming e-mail serves as a purchase order. [OSU reserves the right to negotiate this provision to permit use of shopping cart software].
- e. Contractor shall accept Orders from Customers that comply with the provisions of this Contract until this Contract terminates.
- f. Contractor will provide Order confirmation by e-mail to the Customer which will include the following:
 - i. Customer Name
 - ii. Department Name
 - iii. Contact Name
 - iv. Purchase Order Number
 - v. Contractor Order Number
 - vi. The statement "Terms of this sale are completely governed by Contract number [To Be Determined]"
- g. OSU is not obligated or liable under an Order if OSU is not the Customer placing the Order.
- h. Nothing in this Contract obligates any Customer to place any Order.
- i. Termination of this Contract does not terminate any right or obligation of a party to an Order that is accepted before termination of this Contract.

3. IMPLEMENTATION, TRAINING, SERVICES, PRICING AND DELIVERY SCHEDULE.

A. IMPLEMENTATION AND TRAINING.

Contractor shall introduce and follow the implementation and training plan as set forth in **Attachment A.**

B. PRICING.

Contractor shall sell the Goods for prices determined as follows:

- a. Price Structure:
The price structure for all items is a [To Be Determined based on Proposals] % discount off Manufacturer's List Price (MLP). Contractor may negotiate increased discounts after the initial term for subsequent annual renewals. However, discounts shall not be decreased at any point during the term of the Contract. Contractor shall submit any proposed increase in discounts in writing to OSU Contract Administrator for consideration at least forty-five (45) days before the annual renewal period.
- b. Manufacturer's List Price:
[To be determined based on Proposals].
- c. Minimum Discount:
All discounts are minimum discounts, and subject to higher discounts for bulk purchases, promotional offerings, factory rebates or other situations where the Contractor may be able to offer higher discounts.
- d. OSU Pre-Configured Computer Discounts:
Contractor will set up and maintain a website portal that contains configurations specifically designed for OSU departments. These configurations will be offered at discounts that exceed the Minimum Discount. The discount offered for each configuration will be determined at the time the configurations are developed.
- e. Additional Price Stipulations:
Contractor agrees to the following additional Contract price stipulations:
 - i. Discounts shall be consistent for all ordering venues, internet, phone, etc.
 - ii. There will be no "small order", "minimum order", or "special order" charges or surcharges.
 - iii. There will be no return fees for inaccuracies or other errors on the part of the Contractor.
 - iv. Any rush delivery that occurs as a result of Contractor's error (e.g., stock-outs, etc.) will be at no additional cost to Customer. No handling surcharges will be added or discounts lost for any rush or expedited orders
 - v. Contractor shall not establish or charge any surcharge unless expressly permitted by this contract.

C. DELIVERY.

- a. Delivery Charges:
Goods will be delivered at no additional charge to Customer. Contractor shall deliver Goods F.O.B. Destination, Prepaid and Allowed. Responsibility and liability for loss or damage remain with the Contractor until final inspection and acceptance, when responsibility passes to OSU except as to latent defects, fraud and Contractor's warranty obligations. Payment does not indicate acceptance.
- b. Delivery Timing:

Contractor shall deliver Goods within 30 days of receipt of order unless item is on backorder. Contractor shall use a signature tracking program to provide proof of delivery.

c. Backorder Items:

Contractor shall notify Customer of items on backorder within 2 business days of receipt of order. Contractor must allow Customer to decide whether backorders will be canceled, substituted or maintained.

d. Delivery Expediting:

Contractor shall provide an option for expedited delivery at Customer request and expense.

e. Delivery Packaging:

Orders for each delivery point shall be packaged individually.

f. Delivery Labeling:

Contractor will ensure that shipping labels will include the following:

- i. Entity Name
- ii. Department Name (for OSU Customers)
- iii. Contact Name
- iv. Street Address or Building and Room Number
- v. Phone Number
- vi. Number of Cartons

g. Packing Slip Information:

Contractor will ensure that packing slips will include the following:

- i. Entity Name
- ii. Department Name (for OSU Customers)
- iii. Contact Name
- iv. Street Address or Building and Room Number
- v. Phone Number
- vi. Number of Cartons
- vii. Purchase Order Number
- viii. Contractor Order Number
- ix. The statement "Terms of this sale are completely governed by contract number [To Be Determined]"
- x. Order Item Number(s) and Description(s)
- xi. Manufacturer's List Price and OSU contracted price
- xii. Items on backorder will be noted as such with an anticipated delivery date

D. CUSTOMER SERVICE.

Contractor shall provide customer service in accordance with Contractor's customer service plan as set forth in **Attachment B**.

E. SERVICE LEVELS.

Contractor shall provide Goods consistent with the Service Level Commitments set forth in **Attachment C**.

F. REPORTING REQUIREMENTS.

Contractor shall provide reports to OSU PaCS in accordance with **Attachment D**.

G. RETURN POLICY.

Contractor will guarantee a no-hassle return policy. Contractor will accept any Good for return for any reason within thirty (30) days of receipt. Contractor will accept returns for cases where the Good is incorrectly shipped or where the Good does not meet the specifications listed on the quotation or purchase order within ninety (90) days of receipt. Non-defective merchandise returns must be in substantially the same condition as received for credit or refund as determined by the Customer. Contractor agrees that returns will not have restocking fees associated with them. Return authorizations and shipping instructions must be made available within two (2) working days of the request.

Contractor is responsible for shipping costs associated with returns for cases where the Good is incorrectly shipped or where the Good does not meet the specifications listed on the quotation or purchase order. Contractor is responsible for shipping costs associated with warranty replacement or return for the life of the warranty.

H. ENERGY EFFICIENCY.

Applicable equipment must be rated "energy star" per the federal standard as described at www.energystar.gov.

I. NECESSARY COMPONENTS.

Unless specified otherwise by Customer at time of order, Contractor shall include all components, hardware and parts necessary for complete and proper assembly, installation and operation of Goods.

J. NEW AND UNUSED GOODS.

Unless specified otherwise by Customer at time of order, Contractor shall deliver Goods that are new, unused and produced from current production inventory. Contractor shall provide Goods manufactured from only those components that the manufacturer offers in the manufacturer's current parts catalog for Goods and carry full manufacturer warranties.

K. WARRANTIES.

Contractor warrants all Goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with specifications in the Solicitation Document. All implied or expressed warranty provisions of the Uniform Commercial Code, at ORS Chapter 72, are incorporated into this Contract. All warranties run to OSU.

Contractor will include a full one (1) year warranty on all items offered in their catalog at no additional cost to OSU. Contractor will offer the option to purchase at an additional cost a warranty of at least three (3) years, in lieu of the one (1) year warranty, on items in their catalog that by the nature of their components and quality of workmanship have a predicted useful life of three (3) years or greater.

WARRANTY SELF-SERVICE OPTION (OPTIONAL CLAUSE if offered by Contractor).

Contractor shall provide a warranty self-service option by which Customers may be approved or certified to access Contractor's website portal for ordering of parts direct from the manufacturer.

L. NON-COMPLIANCE.

If any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify OSU and any affected Other Customer of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. Affected Customers may elect to (a) reject Goods in whole or in part, or (b) revoke acceptance of Goods in whole or in part. If Customers reject Goods or revoke acceptance of Goods, Contractor shall remove the particular Goods from the applicable Customer's possession at no cost to the Customer and shall reimburse Customer for all payments made for those Goods.

4. PAYMENT:

A. GENERAL PAYMENT PROVISIONS.

Contractor shall send invoices to Customer for Goods delivered and accepted by Customer. Contractor shall include in each invoice:

- a. The Contract number and Purchase Order number;
- b. The quantity of Goods ordered, the quantity of Goods delivered, the date Goods were delivered, the price per unit;
- c. A detailed description of any services performed, the dates services were performed, the rate or rates for services performed, and the total cost of services; and
- d. The total amount due and the payment remittance address.

Contractor shall send all invoices to Customer's authorized representative as specified in the purchase order.

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

B. ADMINISTRATIVE FEE.

Contractor shall pay OSU PaCS an administrative fee of 2% of the total gross revenue from the Contract. Total gross revenue includes any business generated from Customers using this Contract including Orders from Other Customers. Administrative fee payments shall be made quarterly in arrears no later than 45 days after the end of each quarter, made payable to "OSU PaCS" and mailed to 644 SW 13th Street, Corvallis OR 97333. Payment shall include a report indicating Contractor's calculation of the gross revenue and the administrative fee. This administrative fee is designed to be invisible to the end users in that they will not see it as a separate, additional charge.

5. INDEMNIFICATION AND INSURANCE:

A. LIABILITY INSURANCE.

During the term of this Contract, Contractor shall maintain in force at its own expense the following insurances, if marked, to cover injury, death, errors, omissions or negligent acts related to the Goods or services provided under this Contract in the amounts listed below.

- Commercial General Liability
- Professional Liability
- Automobile Liability

Contractor shall ensure that insurance policies are issued by an insurance carrier authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU. Contractor shall ensure that OSU's employees and agents are included as additional insureds in said insurance policy.

Limit for any single claimant per occurrence:

From commencement of the Contract term to June 30, 2012: \$1,700,000.
July 1, 2012 to June 30, 2013: \$1,800,000.
July 1, 2013 to June 30, 2014: \$1,900,000.
July 1, 2014 to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 3 (Senate Bill 311).

Limit for all claimants per occurrence:

From commencement of the Contract term to June 30, 2012: \$3,400,000.
July 1, 2012 to June 30, 2013: \$3,600,000.
July 1, 2013 to June 30, 2014: \$3,800,000.
July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 3 (Senate Bill 311).

Property Damage:

Limit for any single claimant per occurrence: \$101,400.
Limits for all claimants per occurrence: \$506,900.

This amount is effective on July 1, 2011 – June 30, 2012 and will be adjusted every year thereafter as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 5 (Senate Bill 311).

B. WORKERS' COMPENSATION.

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

C. PROPERTY INSURANCE.

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

D. PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and OSU's insurance is excess and solely for damages or losses for which OSU is responsible.

E. CERTIFICATES OF INSURANCE.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the OSU Contract Administrator, upon request. In such case, Contractor shall ensure that the Certificate(s) specifies all additional insureds (or loss payees). Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

F. NOTICE OF CANCELLATION OR CHANGE.

Contractor shall not cause or permit any cancellation, material change, potential exhaustion of aggregate limits or notice of intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to OSU's Contract Administrator.

G. INDEMNITY AND RESPONSIBILITY FOR DAMAGES.

(a) Contractor shall indemnify and hold harmless Customers and their respective officers, board members, employees, agents and other representatives against claims, expenses, or losses: (i) that result from Contractor's negligence, wrongful acts or willful misconduct, or (ii) alleging Contractor's services, information or materials supplied by Contractor to Customers, or Customer's use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party. (b) Customer's right to receive indemnification under this Section is conditioned upon Customer giving reasonably prompt notice and assistance of any claim; provided however, that Customer's failure to provide notice and assistance does not limit Customer's right to indemnification except to the extent such failure or assistance materially affects Contractor's ability to defend the claim. (c) Contractor's indemnification obligation under this Section includes but is not limited to all of Customer's expenses of litigation, court costs and reasonable attorney fees.

6. GENERAL TERMS AND CONDITIONS:

A. ACCESS TO RECORDS AND AUDIT.

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 this Contract. OSU, the Oregon State Board of Higher Education, 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. Contractor shall maintain such books and records for OSU's review for at least six years beyond the Term of the Contract

unless OSU authorizes a shorter period in writing. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU.

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

B. ASSIGNMENT/SUBCONTRACT/SUCCESSORS.

Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the OSU Procurement and Contract Services Department, and any attempt by Contractor to assign, sell, transfer, or subcontract rights or delegate responsibilities under this Contract, without first acquiring written approval of the OSU Procurement and Contract Services Department, is void. No such written approval from OSU relieves Contractor of any obligations of this Contract, however, and any assignee, new owner, transferee or subcontractor will be considered an agent of Contractor. Contractor shall remain liable to OSU under the Contract as if no such assignment, sale, transfer, or subcontract had occurred. The provisions of this Contract are binding upon and will inure to the benefit of the parties to the Contract and their respective permitted successors and assigns.

C. APPLICABLE LAW; JURISDICTION AND VENUE.

- a. This Contract is governed and shall be construed in accordance with the laws of the State of Oregon, without resort to any other jurisdiction's conflict of law rules or doctrines. Any claim, action, or suit between OSU and Contractor that arises out of or relates to performance of this Contract must be brought and conducted solely and exclusively within the Circuit Court for Marion County, for the State of Oregon.
- b. Notwithstanding the foregoing paragraph, if a claim must be brought in federal forum, it must be brought and adjudicated solely and exclusively in the United States District Court for the District of Oregon. This paragraph applies to a claim brought against OSU only to the extent Congress has validly abrogated OSU's sovereign immunity and is not consent by OSU to be sued in federal court. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in the paragraph above, the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

D. COMPLIANCE WITH APPLICABLE LAW.

The parties shall at all times comply with all federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) 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.

E. CONFIDENTIALITY.

This Contract is subject to the limitations and conditions of the Oregon Public Records Law, ORS 192.410-192.505.

F. EXECUTION AND COUNTERPARTS.

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

G. EXPORT CONTROL.

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

H. 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 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. However, if a default or delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

I. GOVERNMENT EMPLOYMENT STATUS:

Contractor certifies that it is not currently employed by the federal government and not an employee of OSU.

J. INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the services. Contractor is not an officer, employee or agent of OSU as those terms are used in ORS 30.265.

K. MERCHANT EXPO.

The Contractor shall participate in the annual OSU Merchant Expo. The Contractor is required to rent at least one booth and provide a \$1,000 sponsorship to the event. The OSU Merchant Expo is a vendor fair designed to allow OSU contractors, local vendors and other suppliers the opportunity to rent booth space and exhibit, market and provide information about their Goods and services with interested OSU faculty and staff. The OSU Merchant Expo is facilitated by OSU Procurement and Contract Services and information and registration is offered through the Procurement and Contract Services website at www.pacs.oregonstate.edu.

L. MWESB REPORTING LANGUAGE PROVISION.

Upon request by OSU, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

Disabled Veteran Enterprise means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

Disadvantaged Business Enterprise (DBE) is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

Emerging Small Business, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed \$3,266,219 for construction and \$1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

Minority Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

Women Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract. This report will be provided on an annual basis to OSU. This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

M. NOTICE.

All notices or other communications under this Contract must be in writing and, unless otherwise expressly set forth in this Contract, shall be delivered in person, by email (and confirmed by mail), first class mail, fax (and confirmed by mail), registered or certified mail, or overnight delivery service to the other party at its respective address, email address, or fax number set forth below. All notices are effective upon receipt by the party to be notified.

OSU PaCS
Contract Administrator
Will Young
Procurement Analyst
644 SW 13th St
Corvallis, OR 97333
(541) 737-3572
(541) 737-2170
will.young@oregonstate.edu

CONTRACTOR Contract Administrator
[Name]
[Title]
[Address]
[City, State, Zip]
[Phone Number]
[Fax Number]
[E-Mail Address]

Unless otherwise specified in an Order between Contractor and an Other Customer, those parties shall follow the same notice provision but use the contact information in the Order.

N. ORDER OF PRECEDENCE.

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

O. OSU NAME AND TRADEMARK.

Contractor's shall not use names, marks or trademarks identifying OSU, or any department or office of OSU, or in any other way identify OSU without prior written approval from OSU's Office of University Advancement.

P. PARKING.

All Contractors, vendors and commercial vehicles on the OSU campus are required to have a permit to park, whether utilizing designated street parking or parking in the parking lots. Permits are available for purchase at Transit & Parking Services, located in Adams Hall, 606 SW 15th Street.

Q. NON-EXCLUSIVITY AND PURCHASE QUANTITY OBLIGATIONS.

The parties understand this to be a non-exclusive Contract and that Customers may utilize other contractors for Goods over the life of the Contract and/or cease using Contractor in accordance with the termination provisions of this Contract. This Contract does not obligate Customers to purchase any set quantity or amount of Goods from Contractor.

R. (OPTIONAL CLAUSE:) PERMISSIVE COOPERATIVE PROCUREMENTS.

Contractor agrees to make prices offered under this Contract available to Other Customers upon substantially the same terms and conditions set forth in this Contract. The prices offered to Other Customers shall be at the same rate as offered to OSU. OSU does not guarantee purchases from Other Customers. Contractor shall provide written notification to OSU when an Other Customers begins utilizing this Contract. The total expenditures of Other Customers shall be included in the volumes reported to OSU and included in the calculation of the Contract Administrative Fee. Should the total purchases by OSU and Other Customers collectively trigger any volume discounts, Contractor shall apply such discounts to fees charged to OSU.

S. RECYCLABLE PRODUCTS.

Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract.

T. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION:

Goods supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon Customer's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

U. SALES AND USE TAXES.

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

V. SEVERABILITY.

The invalidity, illegality or enforceability of any provision of this Contract shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain in full force and effect and shall be liberally construed in order to effectuate the purpose and intent of this Contract.

W. POLICIES:

Contractor agrees to abide by all applicable policies of the Oregon University System and OSU, which includes without limitation the following:

SEXUAL HARASSMENT: The State Board of Higher Education has adopted policies applicable to Contractors that prohibit sexual harassment, and Contractor's company and employees are required to adhere to OSU's policy prohibiting sexual harassment in their interactions with members of the OSU community.

FIREARMS POLICY: The State Board of Higher Education has adopted a policy that prohibits Contractor and Contractor's employees, agents, subcontractors and other representatives from possessing firearms on Board-owned or Board-controlled property.

X. SURVIVAL.

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

Y. NO THIRD PARTY BENEFICIARY.

OSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Other Customer's will have enforceable rights under Orders placed and accepted by Contractor in accordance with this Contract, OSU and Contractor reserve the right to modify or terminate this Contract without the consent of Other Customers.

Z. WAIVER.

The waiver by either party of any breach of this Contract by the other party shall not waive subsequent breaches of the same or different kind. The failure of either party to enforce any rights under this Contract in a particular instance shall not operate as a waiver of said party's right to enforce the same or different rights in subsequent instances.

AA. ENTIRE CONTRACT.

This Contract and Orders issued in accordance with this Contract, constitutes the entire agreement between the parties and supersedes all prior representations,

understanding and agreements between the parties. No amendment, consent, or waiver of terms of this Contract shall bind either party unless in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

7. CERTIFICATIONS AND SIGNATURES:

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

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.
- C. Pursuant to OAR 580-061-0030, Contractor certifies that Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts;
- D. The undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor 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.

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

CONTRACTOR:

Signature: _____

Date: _____

By: _____

Title: _____

OSU:

Signature: _____

Date: _____

By: _____

Title: _____

Implementation and Training Plan Attachment A

Contractor shall develop an implementation and training plan for the OSU campus, statewide locations and other Oregon public agencies using this Contract under a permissive cooperative procurement. Contractor will utilize the implementation and training plan after approval of the OSU Contract Administrator

The implementation plan shall include, but not be limited to, the following:

- a. Contractor's introduction process to notify OSU departments of new Contract.
- b. Full contact information to include an 800 number for customer service and sales representative information.
- c. Full outline of training program to educate users about the online tools for ordering and evaluating products.
- d. Schedule of implementation training. Final schedule to be finalized with and approved by OSU Contract Administrator.
- e. Detailed Contractor's quality assurance program.
- f. Plan and timing for website portal customization and access.
- g. Best ways to consolidate orders, tips on cost savings when ordering.
- h. Addition of extra Contractor staff to serve OSU's needs, if necessary, during the implementation period.
- i. Contractor shall provide a training plan for the use of Contractor's tools for placing orders and looking up catalog items, shipping, billing and receiving and product safety issues, Training will be included at no additional charge. Training shall include, but not be limited to the following and be available in a variety of languages:
 - i. Onsite individual or group training
 - ii. Webinars
 - iii. Web links
 - iv. Specialty training about such topics as order consolidation, cost savings, etc.

Customer Service Attachment B

Contractor shall provide, but not be limited to, the following as part of its customer service program:

- a. Online ordering tool with customized website portal for OSU. The website portal will include at a minimum:
 - i. Contractor's product line
 - ii. Product specifications
 - iii. Configuration aids
 - iv. Contact information for order placement
 - v. Order tracking
 - vi. Problem Reporting
 - vii. OSU Pre-Configured Computers:
Contractor will set up and maintain a website portal that contains configurations specifically designed for OSU departments. Contractor will work with the OSU Contract Administrator and OSU departments to develop these configurations and to update configurations as needed.
- b. A Designated Account Management Team, including at a minimum one inside sales person and one outside sales person. The outside sales person will serve as the campus representative and will establish and consistently maintain an on-campus presence.
- c. Response to Customer issues within four (4) business hours of initial contact. Issues may include, but are not limited to the following:
 - i. Requests for product information
 - ii. Order status
 - iii. Billing disputes
 - iv. Delivery disputes / problems
 - v. Product returns
 - vi. Pricing information
 - vii. Account number issues
 - viii. Address and numbers
 - ix. Training requests
 - x. Other urgent requests
- d. No minimum order quantities.
- e. Customer may cancel or choose a comparable Good if items are discontinued.
- f. Provide an indicator that tells the Customer when an item is in stock or is not available, regardless of method of ordering.

Contractor will have a self-management program in place for ensuring Contract performance at the highest level. Contractor will ensure that this program documents all problems, issues, causes and corrective actions and Contractor shall include this information with the semi-annual service level agreement reports detailed in Attachment D.

Service Level Commitments Attachment C

OSU will use performance-reporting tools and service level agreements as outlined in this section to measure the performance of Contractor. OSU reserves the right to modify and introduce additional performance-reporting tools and measures as they are developed.

a. **SERVICE LEVEL AGREEMENT (SLA) RATES:**

Contractor agrees to maintain the following service level rates:

- i. Delivery Timing – 95% or greater. Delivery timing is defined as the delivery of orders within 30 days.
 - ii. Order Accuracy – 98% or greater. Order accuracy is defined as the number of items delivered as ordered, divided by the total number of items ordered.
 - iii. Order Completeness / Fill – 95% or greater. Order fill rate is defined as a number of items on an order filled completely as ordered, divided by the total number of lines on an order.
 - iv. Pricing Accuracy – 99.5% or greater. Price accuracy is defined as a number of audited items where the net price is equal to or less than the contracted price.
 - v. Backorder Rate - 5% or less. Backorder rate is defined as the number of items placed on backorder divided by the total number of items ordered.
 - vi. Overall Customer Satisfaction – 80% or greater. A semi-annual survey of end-users will be conducted by the Contractor to determine the level of customer service satisfaction experienced with the supplier. The survey will be developed by the Contractor, and must be approved by the OSU Contract Administrator. Both the raw and analyzed survey results will be provided to the OSU Contract Administrator. The following includes some of the areas to be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, Overall Satisfaction.
- b. **BUSINESS REVIEWS:** Contractor will participate in semi-annual business reviews. Business Reviews will be scheduled by the OSU Contract Administrator and will include attendance by OSU representatives and Contractor's representatives. The reviews may include discussion of Contract terms and conditions, performance metrics, work performed under the Contract, financial data, proposal of Contract improvements for increased service or lower costs, any potential changes to the Contract and any elevated customer or administrative issues.
- c. **REMEDIES:** [To be determined based on Contractor's proposal and as accepted by OSU].

Reporting Requirements Attachment D

Contractor agrees to report the following summary data to the OSU Contract Administrator on a semi-annual basis.

- i. Total purchases on the Contract by Customers, by month, for the previous two quarters
- ii. Total purchases on the Contract by Customers and any other public agencies using this Contract through a permissive cooperative procurement, by month, for the previous two quarters
- iii. Review of top 25 items sold under the Contract, by dollar amount, sold for the previous two quarters
- iv. Review of top 25 items sold under the Contract, by item quantity, sold for the previous two quarters

Contractor will include the following in the semi-annual reports:

- i. Customer Entity Name
- ii. Product Category
- iii. Item Description
- iv. Manufacturer Name
- v. Manufacturer Part Number
- vi. UPC
- vii. Unit of Measure
- viii. Quantity Shipped
- ix. Date Shipped
- x. Manufacturer's List Price
- xi. Invoice Price
- xii. OSU Pre-Configured Computer Designation (if applicable)

The Contractor will provide the raw and analyzed customer satisfaction survey results to the OSU Contract Administrator semi-annually.

The Contractor shall also provide the semi-annual service level agreement reports in Excel spreadsheet format as outlined below:

- i. On-Time Delivery Rate = Number of orders delivered complete within the 30 day requirement divided by total number of orders delivered
- ii. Order Fill Rate = Number of orders with order fill rate of more than 95% divided by total number of orders
- iii. Backorder Rate = Number of items placed on backorder divided by the total number of items ordered.
- iv. Order Accuracy Rate = Number of orders with order accuracy rate of more than 98% divided by total number of orders
- v. Total Number of Orders Placed, Total Dollar Value of Orders Placed and Average Value of Orders Placed by Customers
- vi. Total Number of Orders Placed, Total Dollar Value of Orders Placed and Average Value of Orders Placed by all by Customers and any other public agencies using this Contract through a permissive cooperative procurement

Contractor will provide the reports required under section 5.L. on an annual basis, and upon request.

Report requirements can be modified at the discretion of the OSU Contract Administrator.

Failure to provide the reports within thirty (30) calendar days of their due date may result in OSU viewing the Contractor as being in default and may result in OSU's termination of the Contract. Submissions of the reports in this section shall be the responsibility of the Contractor without prompting or notification by the OSU Contract Administrator. The Contractor shall submit the completed reports and send by email to the OSU Contract Administrator.

**EXHIBIT 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 Exhibits 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: _____

**EXHIBIT 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: _____
