



The State of Nevada
Division of Purchasing
On Behalf of the Western States Contracting Alliance

Request For Proposal No. 1523
for

Wireless Communication Services and Equipment

Release Date: February 8, 2006
Deadline for Submission and Opening Date and Time: **March 15, 2006 at 2:00 p.m.**

For additional information, please contact:
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or

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(TTY for the Hearing Impaired: 1-800-326-6868.
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This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

See Page 18, for instructions on submitting proposals.

Contact Information

Company Name _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____

E-Mail Address: _____

Prices contained in this proposal are subject to acceptance within _____ calendar days.

Contact Person _____

Print Name & Title _____

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A Request for Proposal process is different from an Invitation to Bid. The State expects vendors to propose creative, competitive solutions to the agency's stated problem or need, as specified below. Vendors may take exception to any section of the RFP. Exceptions should be clearly stated in Attachment A (Certification of Indemnification and Compliance with Terms and Conditions of RFP) and will be considered during the evaluation process. The State reserves the right to limit the Scope of Work prior to award, if deemed in the best interest of the State NRS §333.350(1).

1. OVERVIEW OF PROJECT

The State of Nevada, Purchasing Division, on behalf of the Western States Contracting Alliance (WSCA) and other authorized users, is requesting proposals from responsible vendors to supply wireless communication services and equipment. The purpose of this Request for Proposals (RFP) is to establish contracts on a competitive basis with qualified vendors to directly supply wireless communication services including, but not limited to, the transmission of voice, data and/or video content as well as optional messaging, two-way radio, internet access or other related communications and/or data transmission services. Wireless communication devices are included as well as the related maintenance and support services. Wireless hand-held or other device manufacturers are excluded from this procurement.

The proposal must include FCC licensing documentation for a minimum of fifteen (15) states. Licensing shall be submitted for each of the states listed in Attachment G.

A key objective of this procurement is to obtain greater volume price discounts by combining the volume of purchases from governmental entities within multiple states with administrative savings that will result from the maintenance of a single, comprehensive contract for each selected vendor.

The WSCA directors, or their designee, may authorize education, state and local governmental entities throughout the nation use of the contracts subject to approval of the local state purchasing director and local statutory provisions.

The contract term will be for a four year period beginning July 1, 2006 through June 30, 2010, with the option to extend beyond the initial four year contract term at the lead State's discretion subject to mutual written acceptance. This procurement will result in multiple awards.

2. ACRONYMS/DEFINITIONS

For the purposes of this RFP, the following acronyms/definitions will be used:

Airtime Actual time spent talking on the cellular telephone. Most carriers bill customers based on how many minutes of airtime they use each month. Airtime charges during peak periods of the day vary from about 20 cents to more than 40 cents per minute, depending on the service plan selected. Most carriers offer reduced rates for off-peak usage.

Antenna A wire or set of wires used to send and receive radio waves.

<i>Attenuation</i>	The loss of signal energy due to absorption, reflection, or diffusion during transmission.
<i>Awarded Vendor</i>	The organization/individual that is awarded and has an approved contract with the State of Nevada for the services identified in this RFP.
<i>Bluetooth</i>	Wireless personal area network (PAN) standard that enables data connections between electronic devices such as desktop computers, wireless phones, electronic organizers and printers in the 2.4 GHz range at 720kbps within a 30-foot range. Bluetooth depends on mobile devices equipped with a chip for sending and receiving information.
<i>Call Barring</i>	Enables you to restrict or bar certain or all types of calls to and from your mobile phone, i.e. outgoing calls, outgoing international calls, incoming calls. Barring is activated with a personal code.
<i>Calling Plan</i>	A rate plan selected by subscribers when they start up cellular service, usually consisting of a base rate for system access and a per-minute rate for usage. Service plans are designed to provide the most cost-effective rates for different types and amounts of usage by the cellular subscriber.
<i>Confidential Information</i>	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal. See NRS §333.020(5)(b).
<i>Coverage</i>	Refers to the region within which a paging receiver can reliably receive the transmission of the paging signals.
<i>Data Service</i>	Includes wireless data transmission and Internet access
<i>Division</i>	Department of Administration, Purchasing Division
<i>Equipment</i>	Includes, but is not limited to all equipment necessary to utilize wireless services (e.g., handsets, handheld devices, wireless PC cards, car kits, hands free kits, spare batteries, chargers, cases, belt clips, etc.).
<i>Evaluation Committee</i>	An independent committee comprised of a majority of state officers or employees established to evaluate and score proposals submitted in response to the RFP.
<i>FCC</i>	Federal Communications Commission responsible for regulating telecommunications in the United States, including commercial and private wireless spectrum management.
<i>GSM</i>	Global System for Mobile Communications (GSM) standard has been deployed at three different frequency bands: 900 MHz, 1800 MHz and 1900 MHz. GSM 1900 is primarily deployed in North America. Named after its frequency band around 900 MHz, GSM-900 has provided the basis for several other networks using GSM technology. GSM uses narrowband TDMA which allows eight simultaneous calls

on the same radio frequency. Along with CDMA and TDMA it represents the second generation of wireless networks.

<i>LNP</i>	Local Number Portability, The ability of subscribers to switch local or wireless carriers and still retain the same phone number, as they can now with long-distance carriers.
<i>LOI</i>	Letter of Intent - notification of the State's intent to award a contract to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal notice of award.
<i>May</i>	Indicates something that is not mandatory but permissible.
<i>NOA</i>	Notice of Award- formal notification of the State's decision to award a contract, pending Board of Examiners' approval of said contract, any non-confidential information becomes available upon written request.
<i>Off-Peak</i>	Periods of time during which carriers offer discounted airtime charges. Each carrier designates its own off-peak hours, usually after normal business hours during the week, and weekends
<i>Peak</i>	Highest-usage period of the business day when a cellular system carries the most calling traffic.
<i>Proprietary Information</i>	Any trade secret or confidential business information that is contained in a bid or proposal submitted on a particular contract.
<i>Public Record</i>	All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential (see NRS §333.333 and NRS §600A.030(5)) must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.
<i>RFP</i>	Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection.
<i>Roaming</i>	The ability to use your cellular phone outside your usual service area – when traveling outside of the "home" service area defined by a service provider. Higher per-minute rates are usually charged for calls made or received while roaming. Long distance rates and a daily access fee may also apply.
<i>Roaming Agreement</i>	An agreement between two or more wireless telephone companies outlining the terms and conditions under which the participating companies will provide wireless service to each others subscribers. Roaming agreements commonly are used where no one company can offer complete national and international coverage.
<i>Round-Up Calls/ Billing</i>	When calls are billed by the minute, any call that uses a portion of a minute is rounded up and billed for the whole minute.

<i>Service Charge</i>	The amount customers pay each month to receive wireless service as described in Section 5. Cost.
<i>Shall/Must/Will</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<i>Should</i>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
<i>States</i>	For the purpose of this RFP, shall pertain to the states affiliated with the Western States Contracting Alliance (WSCA).
<i>Subcontractor</i>	Third party, not directly employed by the vendor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the vendor.
<i>Subscriber</i>	A using entity who contracts to receive and pay for wireless or walkie-talkie services.
<i>Trade Secret</i>	Means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
<i>Vendor</i>	Organization/individual submitting a proposal in response to this RFP.
<i>Voice Services</i>	Includes wireless voice transmission
<i>Voice and Walkie-Talkie Services</i>	Includes wireless voice transmission with two-way walkie-talkie functionality.
<i>WSCA</i>	Western States Contracting Alliance. A cooperative group contracting consortium. Membership consists of the principal procurement official that heads the state central procurement organization, or designee for that state, from the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

3. SCOPE OF WORK

Vendors must describe their ability to provide wireless and walkie-talkie communication to the states and the various governmental entities therein. All supporting information regarding the

vendor's services shall be included in the proposal and will be evaluated accordingly. Any services proposed outside of the scope of work shall be identified as "Additional Services".

This section contains the specifications and relevant information respondents shall use for the preparation of their proposals.

All services proposed by the responding contractors shall meet each specific requirement listed in this section. Each specification shall be addressed in detail in the proposal submitted by the responding vendor. For the purpose of the following specifications, "Wireless Communication Services" shall include wireless voice transmission and two-way walkie-talkie functionality, voice-mail, data capabilities (internet access) and messaging.

3.1 General Services

- 3.1.1 Provide quality wireless equipment and services at the lowest cost available in a timely and efficient manner.
- 3.1.2 Establish and provide a set of "standard" plans for voice, voice/walkie-talkie, data and equipment for wireless services.
- 3.1.3 Detail standard features such as voicemail, call waiting, call back and in-plan minutes or megabytes included in the Contractor's proposed services.
- 3.1.4 Activate service on new equipment within 72 hours of request or shipping.
- 3.1.5 Provide the following services at no extra charge:
 - 3.1.5.1 Per line caller ID blocking
 - 3.1.5.2 Upgrades or downgrades to service plans as needed, with no limits
 - 3.1.5.3 Cancellation of services
- 3.1.6 Provide information regarding the Contractor's voice and walkie-talkie coverage across the U.S.; include listing and total % of coverage.
- 3.1.7 Provide secure online access for each participating entity representative to manage accounts and order services. Only the representative shall be allowed to manage accounts and service/equipment ordering.

3.2 Administration of Contract

3.2.1 General

- 3.2.1.1 Meet with lead States' Purchasing Department representative on a semi-annual basis (once every six (6) months) to evaluate:
 - Pricing/rates relative to prevailing full market pricing/promotions/solicitations.
 - Actual billed charges relative to prevailing available full market pricing.
 - Adjustments to maintain the original discount offered to the then prevailing available full market pricing.
 - Rebates to maintain discounted intent of current Agreement.
- 3.2.1.2 Maintain a specified time period for this review, which shall not exceed twenty (20) business calendar days. All changes/reductions to current agreement pricing shall be formalized by an Agreement amendment to existing Agreement.
- 3.2.1.3 The contractor shall report contract utilization and pay a WSCA administration fee in accordance with the terms and conditions of the contract. The WSCA directors approved the level of the WSCA administration fee. The WSCA administration fee is not negotiable. Some WSCA and non-WSCA States may require that an additional fee

be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of the contract. The contractor may adjust SES pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the procuring agencies outside the jurisdiction of the WSCA State requesting additional fee.

- Rebate checks will be made payable to WSCA, 515 E Musser Street, Ste. 300, Carson City NV 89701 and mailed in accordance with quarterly reports, Attachment F. Contractor will provide a report indicating the amounts rebated to each State agency.

3.2.1.4 Maintain detailed records pertaining to the cost of services rendered and products delivered for a period of three years from the date of acceptance of each purchase order.

3.2.1.5 Make records subject to billing audits either before or after payment. Assist participating entities with detail account information required by the participating entity or auditor anytime during the contract period.

3.2.2 Reporting

3.2.2.1 Reporting shall be provided in electronic format via e-mail or CD in Excel, with hardcopies available upon request at no extra charge. See Attachment F “Quarterly Report Format”.

3.2.2.2 The following reports shall be submitted for the respective quarter:

- Usage and purchases under the contract.
- Quarterly optimization report for each wireless service subscriber. The goal of these optimization reports is to ensure that each subscriber is utilizing the most appropriate plan. This includes identifying subscribers that may be consistently incurring overage charges, and therefore should move a more cost effective plan or subscribers consistently under-utilizing a plan, and therefore should move to a lower cost plan.
- Voice and combined voice/walkie-talkie related reports upon request.
- Data related usage reports upon request.

3.2.2.3 Provide “Equipment Sales Report”: a quarterly summary of wireless equipment for all participating entities (including handsets, handheld devices, accessories, etc.). Reports are to be submitted to the lead State in accordance with. Individual participating entities may request specific equipment sales summaries, which shall be provided at no cost. Reports shall include report elements as seen in Attachment F.

3.2.2.4 Upon request, provide reporting elements and/or management reports related to usage for data service that are available and would optimize the participating entity’s ability to assess utilization and cost.

3.2.2.5 Be able to provide custom reports as requested by the individual participating entity.

3.2.2.6 Upon request, provide subscribers usage reports which include full itemization of call details (such as the information on the Contractor’s standard bill for consumer accounts) to enable verification of usage,

including: (1) call date, call number, call length, call time, and (2) plan cost, per minute charges, overage cost, additional features charges and other fees, etc.

3.2.3 Contract Management

3.2.3.1 Assign a Contract Manager to manage the WSCA Account, who shall be responsible for:

- The Contract's overall performance requirements, ongoing unresolved issues, overall customer service,
- Providing any additional documentation necessary, as requested by the State for performance audits conducted periodically to evaluate areas of service required by this RFP. (i.e., delivery, fill rate, variance reports, customer representatives).
- Meet with the lead State every six (6) months or as otherwise, specified to maintain the partnership between the State and the Contractor. Meetings may involve, but not be limited to, the following:
 - Contractor performance
 - Problem resolution
 - Mandatory and custom reports
 - Improvement opportunities (i.e., cost savings opportunities, use of enhanced service features etc.)

3.3 **Voice Services Equipment and Support**

3.3.1 Define your statewide and national Voice Services coverage by each state included in WSCA, provided in Attachment G.

3.3.1.1 Provide detailed in-network (no roaming) voice and data coverage (include coverage maps) for States, with an overlay of counties and major highways. Further coverage maps must correspond to the basic no cost handsets provided (i.e., the basic handset must be able to access the in-network areas defined in the coverage maps without incurring any roaming charges when calling within the calling plan location).

3.3.1.2 Provide detailed national in-network (no roaming) voice and data coverage national maps, with an overlay of states, counties and major highways. Coverage must correspond to the basic no cost handsets provided (i.e., the basic handset must be able to access the in-network areas defined in the coverage maps without incurring any roaming charges when calling within the calling plan locations).

3.3.1.3 Provide detailed in-network and off-network voice and data coverage maps for Canada and Mexico, and any additional countries, if covered by proposed services.

3.3.2 Provide information where geographic coverage in less than 50% by county within each state.

3.3.3 Provide updated coverage maps quarterly by the 15th of each month following the end of each quarter via website.

3.3.4 Provide wireless tower site maps as part of RFP response. Site-maps to be provided via website to be downloaded by each state.

3.3.5 Notify each State's designated key contact at least five days in advance of any planned service outages and/or scheduled maintenance. This notification must include impacted coverage areas and an estimate of the outage timeframe.

- 3.3.6 Prorate the bill for outages of service for periods of time exceeding 24 hours. Describe the auditing procedures for implementing this policy.
- 3.3.7 Describe on going process to improve coverage for areas that are having inadequate or less than 50% coverage. Provide timeline of anticipated improvements.
- 3.3.8 Define how Contractor will improve coverage to State offices (buildings/facilities/sub-ground level offices) that experience inadequate wireless service.
- 3.3.9 Identify all basic equipment provided as necessary for vendor's standard operation within Contractor's wireless network for all subscribers (new activation or regular contract term subscribers). This shall include, but may not be exclusive to, voice handset, AC power charger/adapters and compatible hands-free accessory(s).
- 3.3.10 Allow for a designated trial period for testing/evaluating equipment without additional charges or fees. Designate the timeframe for the 'trial period' and procedures for implementing this policy.
- 3.3.11 Indicate if Contractor is anticipating migration to new or different technology. If so, identify the changes that subscribers shall anticipate proposed timeline and plans to ensure a smooth transition to the new technology.
- 3.3.12 Describe repair/replacement procedures/processes in detail for the following situations (include description of forms and information required):
 - 3.3.12.1 Repair of equipment with new standard parts or parts of equal performance to new parts.
 - 3.3.12.2 Repair/replacement parts for all equipment covered under warranty.
 - 3.3.12.3 Detail all situations where States may/will incur cost of repairs/replacement for equipment, i.e., shipping, gross neglect of equipment by subscriber etc.
 - 3.3.12.4 Repairs for out of warranty equipment (i.e., discounted pricing for repairs)
 - 3.3.12.5 Repairs/replacements/ loaner equipment in which replacement equipment will be new or factory refurbished.
 - 3.3.12.6 Walk-in repairs at retail stores.
- 3.3.13 Enclose all warranty information with all equipment at the time of delivery/shipment, and provide additional warranty information as requested by the subscriber.
- 3.3.14 Submit full listing of walk-in service/repair center locations in each respective state, with qualified personnel to repair the equipment on site that will manage all service and repairs under agreement.
- 3.3.15 Have the ability to provide wireless data services for Personal Digital Assistants (PDA) that have wireless voice service capability. List the supported PDA's by your company and the supporting wireless data services; include a brief description of all services.

3.4 Walkie-Talkie Equipment and Service

- 3.4.1 Does your company provide walkie-talkie equipment and services? If so, provide a description of walkie-talkie technology, include the following:
 - 3.4.1.1 Explanation of how this technology enables secure network access.
 - 3.4.1.2 Ability to encrypt voice/walkie-talkie calls.
 - 3.4.1.3 Information regarding the transmission delay for connection through walkie-talkie service.

- 3.4.2 Provide a detailed walkie-talkie coverage map with an overlay of state, counties and major highways. Identify areas where geographic coverage is less than 50% by county within each state.
- 3.4.3 Does your technology offered allow subscribers the ability to:
 - 3.4.3.1 Set up calling groups for walkie-talkie functionality at the same time the walkie-talkie service is activated.
 - 3.4.3.2 Create, edit and manage calling groups online.
- 3.4.4 Provide details regarding the following:
 - 3.4.4.1 Ability to disable voice wireless service from the combined voice/walkie-talkie service (i.e., only walkie-talkie service).
 - 3.4.4.2 Walkie-talkie usage and measurement for billing.

3.5 Natural Disaster or Statewide Emergencies

- 3.5.1 Provide priority voice service to State employees with critical job duties that are responsible for responding to the disaster/emergency event.
- 3.5.2 Be able to activate equipment and wireless service within 24 hours after request in the event of a State disaster/emergency.
- 3.5.3 Detail procedures required applying for and initiating priority status service.
- 3.5.4 List all airtime or fees associated with priority service.

3.6 Pricing and Service Plans

- 3.6.1 Provide pricing proposals for each of the plan options found in Attachment E. The proposed services and pricing shall meet or exceed the current technology and service plans available.
 - 3.6.1.1 Offer participating entities equivalent or lesser cost plans than offered to private or public agencies through promotional, solicitations and/or contractual arrangements.
- 3.6.2 Supply a method of verifying published pricing to compare with proposed plan(s) as part of submitted pricing exhibits. The Contractor shall provide a published web address (URL) with access to fees/pricing to be reviewed and verified by the States.
- 3.6.3 Agrees that the actual billed price for wireless equipment and services shall be the lesser of:
 - 3.6.3.1 the publicly available prices as of the date of the Purchase Order or a quote, whichever is lower, less the percent discount set forth in the agreement, or
 - 3.6.3.2 the price set forth on a Purchase Order.
- 3.6.4 Identify any applicable taxes.

3.7 Equipment Ordering and Service Activation

- 3.7.1 Upon execution of a Participating Agreement, awarded vendor must request standard equipment ordering and service activation procedures.
 - 3.8.1.1 Hours of Operations shall be maintained for service/support, ordering and walk-in orders during normal business hours by each geographic location.
- 3.7.1 Provide an order receipt acknowledgement within one (1) business day after receipt of an order. The order receipt acknowledgement must include the following:
 - 3.7.1.1 Equipment and/or service plan purchased
 - 3.7.1.2 Contractor order number
 - 3.7.1.3 Agency order number/Purchase order number

- 3.7.1.4 Subscriber's name
- 3.7.1.5 Bill to address
- 3.7.1.6 Ship to address
- 3.7.1.7 Ordering department
- 3.7.1.8 Account information
- 3.7.1.9 Additional information required by the State
- 3.7.2 Notify the representative within one (1) business day after order acknowledgment if an item is out of stock. The representative shall have the option of:
 - 3.7.2.1 Substituting an available product, or
 - 3.7.2.2 Canceling the item from the order
 - 3.7.2.3 Get comparable equipment to the subscriber within 15 days of the order at no additional cost.
 - 3.7.2.4 Under no circumstance is the Contractor permitted to make substitutions.
- 3.7.3 Provide confirmation of order shipment. The shipment confirmation procedure must contain the following information:
 - 3.7.3.1 Phone number for new lines
 - 3.7.3.2 Electronic serial number (ESN)
 - 3.7.3.3 Date shipped
 - 3.7.3.4 Tracking number
 - 3.7.3.5 Account number
 - 3.7.3.6 Subscriber name
 - 3.7.3.7 Additional information mutually agreed upon by participating entity and the Contractor
- 3.7.4 Provide account changes or termination acknowledgements within 24 hours of a change or termination request.
- 3.7.5 Provide detailed processes and procedures for the following:
 - 3.7.5.1 Freight/deliveries prepaid by the Contractor, to the receiving point destination upon order, within the participating entities.
 - 3.7.5.2 Responsibility and liability for loss or damage for all orders until final inspection and acceptance, when the ordering organization shall assume responsibility, except the responsibility for latent defects, fraud, and the Contractor's warranty obligations.
 - 3.7.5.3 Urgent delivery in disaster/emergency situations. In these cases, the Contractor may provide expedited delivery (e.g., Overnight Fed-X, UPS, or schedule pick of equipment at a retail center).
- 3.7.6 Provide a packing slip with all shipped orders to include the following:
 - 3.7.6.1 Representative's name, section or unit name, location (street address, building, floor, and room number).
 - 3.7.6.2 Designated contact/name of ordering person (if different than representative).
 - 3.7.6.3 Billing address
 - 3.7.6.4 Ship-to address
 - 3.7.6.5 Contractor order number
 - 3.7.6.6 Agency order number (purchase order number), if applicable
 - 3.7.6.7 Description of items
 - 3.7.6.8 Additional information required by each participating entity
 - 3.7.6.9 Itemized each product in packages containing more than one item
- 3.7.7 Ensure for new subscribers, shipped equipment is activated, registered, and ready for use, unless specified otherwise.

3.8 Invoice/Credit Memo Requirements for Services and Equipment

- 3.8.1 Provide two optional forms of invoicing to participating entities:
 - 3.8.1.1 Electronic format (email, CD, DVD, etc)
 - 3.8.1.2 Hard copy (paper based invoices)
- 3.8.2 Ensure that all invoices be submitted on a monthly basis on Contractor's letterhead.
- 3.8.3 Work with each participating entity on setting the Monthly Billing Cycle date. Master/Parent invoices must include individual account invoices for verification purposes. All/each invoice must contain at a minimum the following elements:
 - 3.8.3.1 Contractor name, address, and telephone number
 - 3.8.3.2 Invoice Period
 - 3.8.3.3 Contract Number
 - 3.8.3.4 Vendor's Remittance Address
 - 3.8.3.5 Parent Account Number, if applicable
 - 3.8.3.6 Account Number
 - 3.8.3.7 Cost Center - if requested by participating entity
 - 3.8.3.8 Agency Billing Code - if requested by participating entity
 - 3.8.3.9 Plan Name
 - 3.8.3.10 Monthly service charges broken down and grouped by cost center: Itemized Charges – Monthly Service, Feature, Airtime, Long Distance, Roaming, Data, etc.
 - 3.8.3.11 Adjustments
 - 3.8.3.12 Total Service Charges
 - 3.8.3.13 Taxes (if applicable)
 - 3.8.3.14 Total of Charges, if cost centers are used, total of each cost center must be shown.
 - 3.8.3.15 The bottom of each invoice shall have a total for all orders, a total for all credits and amount due.
 - 3.8.3.16 Additional information as required by the participating entity.
 - 3.8.3.17 For equipment: product cost details – A detailed breakdown of product cost by line item: product published cost, product discount, product cost to States, etc.
 - 3.8.3.18 For equipment: Person placing order
 - 3.8.3.19 Method of ordering
 - 3.8.3.20 Quantity
 - 3.8.3.21 Ship to address
 - 3.8.3.22 A separate line-item for tax and delivery charges
- 3.8.4 Credit Memos to include the following information:
 - 3.8.4.1 Credit date of issue
 - 3.8.4.2 Subscriber/account number
 - 3.8.4.3 The invoice number and date
 - 3.8.4.4 Reason for credit
 - 3.8.4.5 Amount of credit issued
- 3.8.5 Credits issued to appear on the next monthly invoice as a separate line item.
- 3.8.6 Resolve all credit memos within 4 business days of notice from participating entity.
- 3.8.7 Ensure that there will not be any service outages during outstanding balances, disputed amount owed or late payments due.

3.9 Customer Service and Customer Service Representatives

- 3.9.1 Remote customer and Technical support must be available 24 hours a day, seven (7) days a week for all support questions, including but not limited to hardware problems, service problems and network issues.
- 3.9.2 Designate a primary customer service representative (CSR) and technical service representative (TSR) with government contract experience which is:
 - 3.9.2.1 Assigned to meet the needs and is responsible for the WSCA contract and using entities.
 - 3.9.2.2 Available for activating and terminating services, making changes to accounts, answering questions, and assisting in problem resolution.
 - 3.9.2.3 Responsible for escalating problems in the following areas: billing/invoicing, technical support, and network issues.
 - 3.9.2.4 Authority to escalate service or technical issues up to and including corporate. (Details for these procedures must be submitted with proposal.)
- 3.9.3 Notify the lead State in writing of any unresolved issues or problems that have been outstanding for more than one billing cycle.
- 3.9.4 Institute procedure and describe the process to proactively monitor calling volume and patterns. The Contractor shall immediately report unusual calling volumes and patterns to the PDM, such as usage or cost doubling from the previous month, or months with zero usage, etc. Should the PDM declare such activity as fraudulent, Contractor shall immediately deactivate the service.
- 3.9.5 Provide support (detail procedures) to each subscriber that will transition to the Contractor's services, plans, and equipment.

3.10 Contract Implementation and Transition

- 3.10.1 Existing services shall remain in affect during transition. The WSCA lead States requires all subscribers to be transitioned to the awarded vendors service plan, within 45 days of contract start. Assuming a July 1, 2006 contract start day, provide a detailed implementation and transition plan containing the following:
 - 3.10.1.1 Implementation process to be used to implement the contract, including time to implement the new pricing structure, products and service levels.
 - 3.10.1.2 Provide at least two examples of large government or private organizations that you have implemented and transitioned services in the past five (5) years.
 - 3.10.1.3 A tentative transition schedule to:
 - Add each party to the contract, including how the Contractor will address transitioning subscribers from other carriers, implementing service switching, and the number of days needed to make this transition
 - Transition existing subscribers to the new contract, implementing service switching and the number of days needed to make this transition
 - Contractor's staff training to transition State services and technical support.
 - Ensure the transition occurs with minimal disruption to authorized personnel and subscribers.
 - Educate the various subscribers in the State to facilitate adoption of products and to buy off the established contracts

- Disseminate Contractor's ordering telephone, facsimile numbers, Internet address, the names of ordering contact persons, and telephone numbers and names of sales representatives
 - Supplying sufficient CSR's available from contract execution to answer questions and transition subscribers.
 - The number of planned onsite information and training sessions. Provide training to facilitate the rapid and smooth transition of the State's subscribers to the new contract upon request. Training plan shall include:
 - Schedule of such training
 - Timing and coordinating training sessions.
 - Materials for educating and transitioning subscribers to Contractor's services and equipment, which must be provided to State for review at least four (4) weeks prior to training.
 - The training plan shall be mutually agreed to have the approval of the State prior to commencement of that training.
 - Provide onsite representatives to sign up new and transitioning subscribers.
 - Assist to match subscriber to appropriate service plan.
- 3.10.2 The final implementation process and transition timeline is subject to the WSCA lead State approval and shall be delivered within five (5) working days of contract approval.
- 3.10.3 The State will assist the Contractor(s) by Notifying participating entities of the proposed implementation and transition process.
- 3.10.4 Work to retain subscribers current number (assuming the same area code), and if possible, their equipment.
- 3.10.5 Make available new contract pricing without imposing any fees (e.g., change fees) for existing subscribers that transition.

3.11 Equipment Recycling

- 3.11.1 Identify any environmentally friendly equipment disposal programs/options.
- 3.11.2 Provide any equipment recycling programs. Is recycled equipment sold for profit?

4. COMPANY BACKGROUND AND REFERENCES

4.1 PRIMARY VENDOR INFORMATION

Vendors must provide a company profile. Information provided shall include:

- 4.1.1 Company ownership (sole proprietor, partnership, etc).
- 4.1.1.1 Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State's Office as a foreign corporation before a contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS §80.015.

- 4.1.1.2 The selected vendor, prior to doing business in the State of Nevada, must be appropriately licensed by the Department of Taxation, in accordance with NRS §360.780.
- 4.1.2 Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable with the State of Nevada.
- 4.1.3 Location(s) of the company offices and location of the office that will provide the services described in this RFP.
- 4.1.4 Is your firm a resident of Nevada or a resident of another state? If so, please list the state of residence. Does your resident state apply a preference, which is not afforded to vendors or vendors who are residents in the state of Nevada? This information may be utilized in determining whether an inverse preference applies pursuant to NRS §333.336.
- 4.1.5 Number of employees both locally and nationally.
- 4.1.6 Location(s) from which employees will be assigned.
- 4.1.7 Name, address and telephone number of the vendor's point of contact for a contract resulting from this RFP.
- 4.1.8 Company background/history and why vendor is qualified to provide the services described in this RFP.
- 4.1.9 Length of time vendor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.
- 4.1.10 Has the vendor ever been engaged under contract by any State of Nevada agency?
 Yes No If "Yes," specify when, for what duties, and for which agency.
- 4.1.12 Is the vendor or any of the vendor's employees employed by the State of Nevada, any of its political subdivisions or by any other government?
 Yes No If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?
- 4.1.11 Resumes for key staff to be responsible for performance of any contract resulting from this RFP to include:
- 4.1.11.1 WSCA Contract Manager for direct responsibility of contract
- 4.1.11.2 Primary Technical Service Representative
- 4.1.11.3 Primary Customer Service Representative
- 4.1.12 **Financial information and documentation to be included in Part III of your response in accordance with the Submittal Instructions.** Information submitted in response to this section shall be submitted as confidential business information in Part III of vendor's RFP response and is not to be included in vendor's technical response.
- 4.1.12.1 Dun and Bradstreet number
- 4.1.12.2 Nevada Vendor Registration Form, Attachment I (Note: A Standard Federal W9 Form is acceptable.)
- 4.1.12.3 Last two - (2) years and current year interim:
Profit and Loss Statement
Balance Statement
- Vendors shall submit financial statements, completed in accordance with Generally Accepted Accounting Principles (GAAP), for each of the vendor's last two years of operation. If the vendor is a member of an affiliated group, audited consolidated financial statements will be accepted. However, if consolidated financial statements are provided, the parent organization will be required to sign a performance guarantee

for the vendor as part of the ultimate contract. Vendors submitting only consolidated financial statements are deemed by the State to agree to this provision.

4.2 REFERENCES

Vendors should provide a minimum of three (3) references from similar projects performed for private, state and/or large local government clients within the last three years. **Vendors are required to submit Attachment D, Reference Form to the business references they list. The business references must submit the Reference Form directly to the Purchasing Division.** It is the vendor's responsibility to ensure that completed forms are received by the Purchasing Division on or before the proposal submission deadline for inclusion in the evaluation process. Business References not received, or not complete, may adversely affect the vendor's score in the evaluation process. The Purchasing Division may contact any or all business references for validation of information submitted.

- 4.2.1 Client name;
- 4.2.2 Project description;
- 4.2.3 Project dates (starting and ending);
- 4.2.4 Technical environment; (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware)
- 4.2.5 Staff assigned to reference engagement that will be designated for work per this RFP;
- 4.2.6 Client project manager name, telephone number, fax number and e-mail address.

4.3 SUBCONTRACTOR INFORMATION

- 4.3.1 Does this proposal include the use of subcontractors?
Yes _____ No _____ Unknown _____
If "Yes", vendor must:
 - 4.3.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.
 - 4.3.1.2 Provide the same information for any proposed subcontractors as requested in the Primary Vendor Information section.
 - 4.3.1.3 References as specified above must be provided for any proposed subcontractors.
 - 4.3.1.4 The State may require that the awarded vendor provide proof of payment to any subcontractors used for this project. Proposals should include a plan by which, at the State's request, the State will be notified of such payments.
 - 4.3.1.5 Primary vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the using agency.
 - 4.3.1.6 Primary vendor must notify the using agency of the intended use of any subcontractors not identified within their response and receive agency approval prior to subcontractor commencing work.

5. COST

Note: All Cost Proposals shall be submitted to the State as a separate, sealed package and clearly marked: “Cost Proposal in Response to RFP No. 1523” please refer to the Submittal Instructions for further instruction.

Cost is a primary criterion for the selection process. Proposals will be evaluated based on the lowest estimated net total cost to WSCA and each individual participating entity, as calculated according to the methodology described in Attachment E.

Vendors are encouraged to propose a quote on all categories for which the vendor has products and services. WSCA is requesting proposals in the two following sub-categories:

- Voice Transmission and Messaging Services
- Voice-Walkie-Talkie, Messaging and Data Equipment Services

Vendors are required to quote prices for two Plan Options: Fixed Price Plans and Discount Off Existing Plans. These service plans were developed based on the usage needs of WSCA subscribers. These designated plans contain mandatory standard features. Vendor’s proposed plans must meet or exceed the minimum requirements identified. Services that exceed the mandatory features shall be identified as “Additional Services”.

5.1 Pricing Instructions

A pricing sheet has been provided in Attachment E, “Pricing Sheet”. All vendors shall submit one pricing sheet for each Option One and Two. Pricing responses shall be submitted on CD in Excel format and hard-copy form. Submission of incomplete responses that deviate from the clearly established structure may result in the rejection of vendor’s proposal. Any items that contain an invalid response (i.e., blank, Not Applicable, N/A, etc.) may disqualify the vendor.

5.2 Pricing Continuance

The Contractor must honor price adjustments that reflect market price decreases. Publicly available list price decreases shall automatically be honored (i.e., solicitations, promotions, contractual agreements with like organizations).

6. PAYMENT

6.1 Payment for the contracted service will be within 30 days upon receipt of invoice and the using agency’s approval. The selected vendors shall accept purchase orders from and deliver wireless communication devices and services to procuring agencies.

6.2 Vendors may propose an alternative payment option; alternative payment options must be listed on Attachment B of the RFP. Alternative payment options will be considered if deemed in the best interest of the State, project or service solicited herein. The State does not issue payment prior to receipt of goods or services.

7. SUBMITTAL INSTRUCTIONS

7.1 In lieu of a pre-proposal conference, the Purchasing Division will accept questions and/or comments in writing, received either by mail, facsimile or e-mail regarding this RFP as follows:

Questions must reference the identifying RFP number and be addressed to the State of Nevada, Purchasing Division, Attn: Shannon Berry or Teri Smith, 515 E. Musser St., Suite 300, Carson City, NV 89701, e-mailed to srvpurch@purchasing.state.nv.us or faxed to (775) 684-0188. The deadline for submitting questions is February 22, 2006 at 2:00 p.m., Pacific Time. All questions and/or comments will be addressed in writing and responses e-mailed or faxed to prospective vendors on or about March 1, 2006. Please provide company name, address, phone number, e-mail address, fax number, and contact person when submitting questions.

7.2 RFP Timeline

<i>TASK</i>	<i>DATE/TIME</i>
Deadline for submitting questions	February 22, 2006 @ 2:00pm
Answers to all questions submitted available on or about	March 1, 2006
<u>Deadline for submission and opening of proposals</u>	<u>March 15, 2006 @ 2:00 pm</u>
Evaluation period	March 16-April 7, 2006
Selection of vendor on or about	April 10, 2006

NOTE: These dates represent a tentative schedule of events. The State reserves the right to modify these dates at any time, with appropriate notice to prospective vendors.

7.3 Proposal submission requirements:

7.3.1 The previous sections define the essential requirements of the vendor contract. This section describes the proposal structure to be used to indicate how requirements will be met. Specific questions and/or information requirements are noted, which clarify the minimum content of the proposal.

In several sections of the RFP as outlined here, the State has offered the vendor the opportunity to describe unique resources for responding to the needs of this RFP. In general, the vendor is encouraged to submit any additional information that will clarify the value of the services offered by the vendor. This must be done within the proposal structure defined here, with attachments used to expand upon areas that do not conveniently fit with this structure.

All information shall be completed as requested. The vendor is encouraged to provide any addition information that would be helpful in evaluating the proposal.

7.3.2 Vendors shall submit their response in three (3) parts as designated below:

Part I: Technical Proposal, Format and Contents

The technical proposal must include the following sections. In addition, all sections must appear in the following order to facilitate comparative evaluations and to form a basis for contract negotiations and reporting:

- Section 3.1 General Services
- Section 3.2 Administration of Contract
- Section 3.3 Voice Services Equipment and Support

- Section 3.4 Walkie-Talkie Equipment and Service
- Section 3.5 Natural Disaster or Statewide Emergencies
- Section 3.6 Pricing and Service Plans
- Section 3.7 Equipment Ordering and Service Activation
- Section 3.8 Invoice/Credit Memo Requirements for Services and Equipment
- Section 3.9 Customer Service and Customer Service Representative
- Section 3.10 Contract Implementation and Transition
- Section 3.11 Equipment Recycling

The above information must be submitted as follows:

One (1) original marked “MASTER”

Twelve (12) identical copies

One (1) identical copy on CD (**Note:** CD must be labeled accordingly and in a case.)

THE TECHNICAL PROPOSAL MUST INCLUDE A SEPARATE TAB/SECTION LABELED “**STATE DOCUMENTS**” WHICH SHALL INCLUDE:

- Page 1 of RFP
- All Amendments to the RFP
- All Attachments requiring signature
- Certificate of Insurance

Technical Proposal must not include cost or confidential information.

Technical Proposal shall be submitted to the State in a sealed package and be clearly marked:

“Technical Proposal in Response to RFP No. 1523”

Part II: Cost Proposal, Format and Contents

The cost proposal must include the following sections:

Section 5.1 Pricing Instructions

Section 5.2 Pricing Continuance

The above information must be submitted as follows:

One (1) original marked “MASTER”

Twelve (12) identical copies

One (1) identical copy on CD (**Note:** CD must be labeled accordingly and in a case.)

Cost Proposal shall be submitted to the State in a sealed package and be clearly marked:

“Cost Proposal in Response to RFP No. 1523”

Part III: Confidential Information:

One (1) original marked “MASTER”

Confidential information should only contain the information listed in section 4.1.2 above, and will not be distributed to the evaluation committee members. Confidential information will be used in the

analysis of financial stability, of which the findings will be reported to the evaluation committee. Information relating to vendor's technical response that is included in the confidential information response will not be included in the evaluation process unless clearly and specifically noted for use by the evaluation committee and the appropriate number of copies provided.

Confidential Information shall be submitted to the State in a sealed package and be clearly marked:

“Confidential Information in Response to RFP No. 1523”

If the separately sealed proposal, marked as required above, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked:

REQUEST FOR PROPOSAL NO.: 1523

PROPOSAL OPENING DATE: March 15, 2006 at 2:00 p.m.

FOR: Wireless Communication Services and Equipment

7.3.2 **Proposal must be received at the address referenced below no later than 2:00 p.m. Pacific Time, March 15, 2006.** Proposals that do not arrive by proposal opening time and date **WILL NOT BE ACCEPTED**. Vendors may submit their proposal any time prior to the above stated deadline.

7.3.3 **Proposal shall be submitted to:**

State of Nevada, Purchasing Division
Shannon Berry, Purchasing Officer or
Teri Smith, Services Purchasing
515 E. Musser Street, Suite 300
Carson City, NV 89701

7.4 The State will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone proposals will **NOT** be considered; however, at the State's discretion, the proposal may be submitted all or in part on electronic media, as requested within the RFP document. Proposal may be modified by facsimile, e-mail or written notice provided such notice is received prior to the opening of the proposals.

7.5 Although it is a public opening, only the names of the vendors submitting proposals will be announced NRS §333.335(6). Technical and cost details about proposals submitted will not be disclosed. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP opening is available. If special arrangements are necessary, please notify the Purchasing Division designee as soon as possible and at least two days in advance of the opening.

7.6 If discrepancies are found between two or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one copy of the proposal is not clearly marked “MASTER,” the State may reject the proposal. However, the State may at its sole option, select one copy to be used as the master.

- 7.7 For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.
- 7.8 If complete responses cannot be provided without referencing confidential information, such confidential information must be provided in accordance with submittal instructions and specific references made to the tab, page, section and/or paragraph where the confidential information can be located.
- 7.9 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 7.10 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
- 7.11 The proposal must be signed by the individual(s) legally authorized to bind the vendor, see NRS §333.337.
- 7.12 For ease of responding to the RFP, vendors are encouraged, but not required, to request an electronic copy of the RFP. Electronic copies are available in the following formats: Word 6.0/7.0 via e-mail, diskette, or on the State Purchasing Division's website in PDF or EXE format at <http://purchasing.state.nv.us>. When requesting an RFP via e-mail or diskette, vendors should contact the Purchasing Division for assistance. In the event vendors choose to receive the RFP on diskette, the vendor will be responsible for providing a blank 3.5" formatted diskette; unless vendors provide a Federal Express, Airborne Express, etc. account number and appropriate return materials, the diskette will be returned by first class U.S. mail.
- 7.13 Vendors utilizing an electronic copy of the RFP in order to prepare their proposal should place their written response in *an easily distinguishable font* immediately following the applicable question.
- 7.14 ***For purposes of addressing questions concerning this RFP, the sole contact will be the Purchasing Division. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal NAC §333.155(3).*** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 7.15 Vendor who believes proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the

Purchasing Division. To be considered, a request for review must be **received** no later than the deadline for submission of questions.

The Purchasing Division shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.

Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.

- 7.16 If a vendor changes any material RFP language, vendor's response may be deemed non-responsive. NRS §333.311.
- 7.17 Vendors are cautioned that some services may contain licensing requirement(s). Vendors shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain the requisite licensure, may be deemed non-responsive. However, this does not negate any applicable Nevada Revised Statute (NRS) requirements.

8. PROPOSAL EVALUATION AND AWARD PROCESS

- 8.1 Proposals shall be consistently evaluated and scored in accordance with NRS §333.335(3) based upon the following criteria listed in descending order of precedence:
- Reasonableness of cost
 - Demonstrated competence
 - Administration capabilities
 - Experience in performance of comparable engagements
 - Expertise and availability of key personnel
 - Conformance with the terms of this RFP

Note: Financial stability will be scored on a pass/fail basis

Proposals shall be kept confidential until a contract is awarded.

- 8.2 The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada NRS § 333.335(5)
- 8.3 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation,

unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. See generally, NRS §333.335.

- 8.4 Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive NAC §333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors.
- 8.5 A Notification of Intent to Award shall be issued in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Board of Examiners, when required. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the State upon written notice to all vendors may negotiate a contract with the next highest scoring vendor or withdraw the RFP.
- 8.6 Any contract resulting from this RFP shall not be effective unless and until approved by the Nevada State Board of Examiners (NRS 284.173).

9. TERMS, CONDITIONS AND EXCEPTIONS

- 9.1 Performance of vendors will be rated semi-annually following contract award and then annually for the term of the contract by the using State agency in six categories: customer service; timeliness; quality; technology; flexibility; and pricing. Vendors will be notified in writing of their rating.
- 9.2 In accordance with Nevada Revised Statute 333.336, if a vendor submitting a proposal in response to this solicitation is a resident of another state, and with respect to contracts awarded by that state, applies to vendors who are residents of that state a preference, which is not afforded to vendors or contractors who are residents of the State of Nevada, the State of Nevada, Purchasing Division shall, insofar as is practicable, increase the out of state vendor's proposal by an amount that is substantially equivalent to the preference that the other state of which the vendor is a resident denies to vendors or contractors who are residents of the State of Nevada.
- 9.3 This procurement is being conducted in accordance with NRS chapter 333 and NAC chapter 333.
- 9.4 The State reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the State to do so.
- 9.5 The State reserves the right to waive informalities and minor irregularities in proposals received.
- 9.6 The State reserves the right to reject any or all proposals received prior to contract award (NRS §333.350).

- 9.7 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated (NRS §333.335).
- 9.8 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.
- 9.9 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the vendor's standard contract language. The omission of these documents renders a proposal non-responsive.
- 9.10 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 9.11 Proposals, which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 9.12 Proposals from employees of the State of Nevada will be considered in as much as they do not conflict with the State Administrative Manual, NRS Chapter §281 and NRS Chapter §284.
- 9.13 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered except as authorized by NRS §333.350(3).
- 9.14 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor. Collaboration among competing vendors about potential proposals submitted pursuant to this RFP is prohibited and may disqualify the vendor.
- 9.15 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 9.16 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.
- 9.17 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposal or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.

- 9.18 All proposals submitted become the property of the State, selection or rejection does not affect this right; proposals will be returned only at the State's option and at the vendor's request and expense. The master technical proposal, the master cost proposal and Confidential Information of each response shall be retained for official files. Only the master technical and master cost will become public record after the award of a contract. The failure to separately package and clearly mark Part III – which contains Confidential Information, Trade Secrets and/or Proprietary Information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.
- 9.19 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded vendor's obligations.
- 9.20 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.
- 9.21 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this RFP. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.
- Notwithstanding any other requirement of this section, the State reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the above-stated Insurance Schedule. It will be the awarded vendor's responsibility to recommend to the State alternative methods of insuring the contract. Any alternatives proposed by a vendor should be accompanied by a detailed explanation regarding the vendor's inability to obtain insurance coverage as described above. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.
- 9.22 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's proposal. An award will not be made where a conflict of interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.
- 9.23 The State will not be liable for Federal, State, or Local excise taxes NRS §372.325.

- 9.24 Attachment B of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment C contract form and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
- 9.25 The State reserves the right to negotiate final contract terms with any vendor selected NAC §333.170. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded vendor's proposal, and the awarded vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 9.26 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the State in evaluation of the proposal. Any vendor misrepresentation shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.
- 9.27 No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the State.
- 9.28 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.
- 9.29 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and chapter 333 of the Nevada Administrative Code.
- 9.30 Local governments (as defined in NRS §332.015) are intended third party beneficiaries of any contract resulting from this RFP and any local government may join or use any contract resulting from this RFP subject to all terms and conditions thereof pursuant to NRS §332.195. The State is not liable for the obligations of any local government which joins or uses any contract resulting from this RFP.
- 9.31 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.

10. SUBMISSION CHECKLIST

This checklist is provided for vendor’s convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award.

Part I: Completed

- 1. Required number of Technical proposals (per Submittal Instructions) _____
- 2. **Required Forms to be submitted with technical proposal under section/tab labeled “State Documents”;** _____
 - a. Page 1 of the RFP completed _____
 - b. All Amendments completed and signed _____
 - c. Primary Vendor Attachments A & B signed _____
 - d. Subcontractor Attachment A & B signed (if applicable) _____
 - e. Primary Vendor Information provided _____
 - f. Subcontractor Information provided (if applicable) _____
 - g. Certificate of Insurance _____
 - h. (other) _____

Part II:

- 1. Required number of Cost proposals (per Submittal Instructions) _____
- 2. (other) _____

Part III:

- 1. Required number of Confidential Information (per Submittal Instructions and defined in Acronyms/Definitions) _____
- 2. Financial Information _____

REMINDERS:

- 1. Send out Reference forms for Primary Vendor (with Part A completed) _____
- 2. Send out Reference forms for Subcontractors (with Part A completed) (if applicable) _____

Attachment A
CONFIDENTIALITY OF PROPOSALS AND
CERTIFICATION OF INDEMNIFICATION
PRIMARY VENDOR

Submitted proposals, which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “confidential” **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors’ technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked “confidential.”

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packing requirements, proposals will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 “ACRONYMS/DEFINITIONS.”

YES _____

NO _____

SIGNATURE _____
Primary Vendor

Date

PRINT NAME _____
Primary Vendor

This document must be submitted in the “State Documents” section/tab of vendors’ technical proposal

Attachment A
CONFIDENTIALITY OF PROPOSALS AND
CERTIFICATION OF INDEMNIFICATION
SUBCONTRACTOR

Submitted proposals, which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “confidential” **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors’ technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked “**confidential**.”

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packaging submission requirements, proposal will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposal that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 “ACRONYMS/DEFINITIONS.”

YES _____

NO _____

SIGNATURE _____
Subcontractor

Date

PRINT NAME _____
Subcontractor

This document must be submitted in the “State Documents” section/tab of vendors’ technical proposal

Attachment B
CERTIFICATION OF COMPLIANCE WITH
TERMS AND CONDITIONS OF RFP
PRIMARY VENDOR

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking “YES” indicates acceptance of all terms and conditions, while checking “NO” denotes non-acceptance and vendor’s exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____
Primary Vendor

Date

PRINT NAME _____
Primary Vendor

EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the “State Documents” section/tab of vendors’ technical proposal

Attachment C

CONTRACT FORM

The following State Contract Form is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. It is not necessary for vendors to complete the Contract Form with their proposal responses.

All vendors are required to submit a Certificate of Insurance in the “State Documents tab/section of their technical proposal identifying the coverages and minimum limits currently in effect.

Please pay particular attention to the insurance requirements, as specified in paragraph 16 of the attached contract.

As with all other requirements of this RFP, vendors may take exception to any of the terms in the Contract Form, including the required insurance limits. Exceptions will be considered during the evaluation process.

Unless specified as above, the insurance minimum limits will be negotiated at the time the State issues a Letter of Intent to Award.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada Acting By and Through Its

(NAME, ADDRESS, PHONE AND FACSIMILE NUMBER OF CONTRACTING AGENCY)

and

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor are both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. **CONTRACT TERM.** This Contract shall be effective from **July 1, 2006 subject to Board of Examiners' approval (anticipated to be June 13, 2006) to June 30, 2010**, unless sooner terminated by either party as specified in paragraph (10).

4. **NOTICE.** Unless otherwise specified, termination shall not be effective until ____ calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT AA: STATE SOLICITATION (RFP #1523) and ATTACHMENTS #1, ETC.;
SCOPE OF WORK

ATTACHMENT BB: CONTRACTOR'S RESPONSE

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph (5) at a cost of \$ _____ per _____ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: _____, not to exceed \$ _____. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. **TIMELINESS OF BILLING SUBMISSION.** The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. **INSPECTION & AUDIT.**

a. **Books and Records.** Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;

iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees

shall include without limitation \$125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	_____
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	_____
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	_____
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	_____

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all

taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.
If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverage Under NRS 616B627 and NRS 617.210" form.

Commercial General Liability Insurance

- 1) Minimum Limits required:
 \$ _____ General Aggregate
 \$ _____ Products & Completed Operations Aggregate
 \$ _____ Personal and Advertising Injury
 \$ _____ Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: \$ _____ Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: \$ _____ Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: \$ _____ Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form amending the definition of “employee” to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: \$ _____

- 1) Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.
- 2) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.
- 3) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

General Requirements:

- a. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, *The State of Nevada, its officers, employees and immune contractors* as defined in NRS41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- f. Approved Insurer: Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as “A-VII” or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, **must** be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, Subsection a above.
- 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor’s full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Mail all required insurance documents to the Contracting Agency identified on page one of the contract.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will

be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal, State or local law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicity formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the jurisdiction and venue of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Independent Contractor's Signature	Date	Independent's Contractor's Title
------------------------------------	------	----------------------------------

Signature	Date	Title
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Signature	Date	Title
-----------	------	-------

Signature	Date	Title
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Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On _____
(Date)

Deputy Attorney General for Attorney General

On _____
(Date)

Attachment D

REFERENCE QUESTIONNAIRE

The State of Nevada, as a part of the RFP process, requires proposing vendors to submit business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor or subcontractor is required to complete Part A and send the following reference form to each business reference listed for completion of Part B. The business reference, in turn, is requested to submit the Reference Form directly to the State of Nevada, Purchasing Division by the requested deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of the response.



RFP # 1523 REFERENCE QUESTIONNAIRE FOR:

Part A:

(Name of company requesting reference)

- As Primary Vendor
 As Subcontractor of _____
 Name of Primary Vendor

Part B:

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of Nevada, Purchasing Division, via e-mail at svrpurch@purchasing.state.nv.us or facsimile at (775) 684-0188, no later than **March 14, 2006** and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of Nevada Purchasing Division, Services Procurement Section by telephone at (775) 684-0170 or by e-mail at svrpurch@purchasing.state.nv.us. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

CONFIDENTIAL INFORMATION WHEN COMPLETED

Company providing reference:	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?
 COMMENTS:

2. How would you rate this firm's knowledge and expertise?
 ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
 COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
 ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
 COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are you with the products developed by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?
COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?
COMMENTS:

10. Would you recommend this vendor's services to your organization again?

Attachment E



U:\SW BERRY\RFPs\
Current\RFP Wireless

Attachment F



U:\SW BERRY\RFPs\
Current\RFP Wireless

Attachment G

Standard Contract Terms and Conditions Western States Contracting Alliance

Note: Although some of the following terms and conditions are duplicates of the standard State of Nevada terms and conditions, they are required by the WSCA by-laws.

PARTICIPANTS: Western States Contracting Alliance (herein WSCA) is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

QUANTITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by vendor; otherwise, it will be considered that the bid is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the bid states "No substitute". Bids will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF BIDS: WSCA reserves the right to accept or reject any or all bids or parts of bids, and to waive informalities therein.

BID SAMPLES: Generally, when required, samples will be specifically requested in the bid invitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at a vendor's request, transportation collect.

CASH DISCOUNT TERMS: Vendor may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Bid prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF BIDS: Bids may be modified or withdrawn prior to the time set for the opening of bids. After the time set for the opening of bids no bid may be modified or withdrawn.

PATENTS, COPYRIGHTS, ETC.: The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

AWARD: The award will be made to the lowest responsive and responsible vendor meeting specifications and all bid terms and conditions. Unless stated in the bid requirements or special terms and conditions, WSCA reserves the right to award items separately or by grouping items, or by total lot.

NON-COLLUSION: By signing the bid the vendor certifies that the bid submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future bid solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions, which follow; the special terms and conditions shall govern.

REPORTS: The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

HOLD HARMLESS: The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting contract(s) construed in accordance with the laws of Nevada. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the contract(s) shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

DELIVERY: The prices bid shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY As used herein "Buyer" refers to any WSCA state agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

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

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

NONDISCRIMINATION: The vendor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The vendor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Vendor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the vendor fails to comply with the provisions of these laws and regulations. The vendor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

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

INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with bid specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

PAYMENT: Payment for completion of a contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material

to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Bid prices must remain firm for the full term of the contract.

EXTENSION OF PRICES: In the case of error in the extension of prices in the bid, the unit prices will govern.

BID PREPARATION COSTS: WSCA is not liable for any costs incurred by the vendor in proposal preparation.

CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

RECORDS ADMINISTRATION: The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

Attachment H Participating Addendum

WESTERN STATES CONTRACTING ALLIANCE WIRELESS COMMUNICATION SERVICES AND EQUIPMENT MASTER PRICE AGREEMENT

1. Scope: (Replace these instructions with a brief description or the jurisdiction of the governmental entity. For example, the jurisdiction includes all the governmental entities within an entire state, a statement to that effect will suffice)

2. Changes: (Replace this with specific changes or a statement that no changes are required)

3. Lease Agreements: (Insert a statement whether or not equipment lease agreement terms and conditions have been approved for use by the governmental entity)

4. Primary Contact: The primary contact individual for this participating addendum is as follows:

Name
Address
Telephone:
Fax:
E-mail:

5. Servicing Subcontractors: The following servicing subcontractors are authorized to perform services.

(Insert servicing subcontractor name or the word "NONE")

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of _____
By: _____
Name: _____
Title: _____
Date: _____

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

Attachment I

State of Nevada Vendor Registration Form

Vendors are requested to complete the attached Nevada Vendor Registration Form, to be included in vendor's proposal, Part III, Confidential Information. A standard Federal W9 Form will be acceptable in lieu of the vendor registration form.



V:\Forms\RFP
Documents\Contract

Attachments J - L are Terms and Conditions of states that intend to participate in resultant contracts of this RFP. These terms and conditions will be negotiated between the awarded contractor and the state.

Attachment J

State of Arizona Participation Information and Requirements

UNIFORM TERMS AND CONDITIONS

Version 7

1 Definition of Terms. As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 “Attachment” means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2 “Contract” means the combination of the Solicitation, including the Uniform and Special Instructions to Vendors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3 “Contract Amendment” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 “Contractor” means any person who has a Contract with the State.

1.5 “Days” means calendar days unless otherwise specified.

1.6 “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7 “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8 “Materials” means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9 “Procurement Officer” means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10 “Services” means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11 “Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12 “State” means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13 “State Fiscal Year” means the period beginning with July 1 and ending June 30,

2 Contract Interpretation

2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

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2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;

2.3.2 Uniform Terms and Conditions;

2.3.3 Statement or Scope of Work;

2.3.4 Specifications;

2.3.5 Attachments;

2.3.6 Exhibits;

2.3.7 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3 Contract administration and operation.

3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs

incurred by the State for testing and inspection.

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3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4 Costs and Payments

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor AzSPO Form 202, Revision 7 4 04/15/03

shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the, contractor

4.5.2 Cancel the Contract

4.5.3 Cancel the contract and re-solicit the requirements.

5 Contract changes

5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6 Risk and Liability

6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be

indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

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6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."

6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this AzSPO Form 202, Revision 7 6 04/15/03 Contract.

7 Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Year 2000.

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In

addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall AzSPO Form 202, Revision 7 7 04/15/03 maintain all applicable licenses and permit requirements.

7.7 Survival of Rights and Obligations after Contract Expiration or Termination.

7.71 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 State's Contractual Remedies

8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order.

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and

remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

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9 Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in

whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State.

9.6 Continuation of Performance Through Termination The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10 Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

Attachment K

State of Colorado Participation Information and Requirements

PRICE AGREEMENT SOLICITATION TERMS AND CONDITIONS

5/1/05(modified)

1. General

1.1 Effect of Price Agreements. The State of Colorado is issuing this solicitation through the procuring agency to select vendors with which to execute State price agreements. The State Purchasing Office will administer the Price Agreement(s) after award. These instructions are intended to summarize the State's procurement process and provide instructions to vendors, but they are not intended to modify procurement statutes and implementing rules. These instructions supplement the BIDS Solicitation Instructions and Terms and Conditions and solicitation instructions in the procuring agency's solicitation.

1.1.1. If a State price agreement is designated as "mandatory," the State agencies and institutions by regulation must satisfy requirements through the price agreement. Exceptions may be granted by the State Purchasing Director on application by the agency or institution involved.

1.1.2. If a State price agreement is designated as "permissive," State agencies and institutions may satisfy their requirements through the price agreement without using Procurement Code procedures (e.g. invitations for bids) to solicit competitive bids or proposals. State agencies or institutions may, however, satisfy requirements without using the State price agreement so long as applicable procurement statutes and rules are followed.

1.1.3. While political subdivisions may order from State price agreements, their use is discretionary with the political subdivision.

1.2. Effect of Estimates/Minimum Orders. Estimates of historical usage are provided for information purposes only. The State does not warrant the accuracy of the estimates or that future usage will be the same. Unless stated otherwise in the award in order to take advantage of price reductions proposed by the vendor, there is no minimum order required in any resulting award.

1.3 Definitions.

"Contract" includes a State contract executed pursuant to State Fiscal Rules, any purchase order, and any other informal agreement permitted by State Fiscal Rules, unless the context clearly requires another meaning.

"Ordering entity" means a State agency or institution or political subdivision which may issue orders against this price agreement.

"Vendor" refers to any person or entity executing a price agreement as a result of an award, and has the same meaning as "contractor" or "offeror."

2. State Price Agreements.

2.1. Price Increases/Decreases.

2.1.1. Unless otherwise limited in the solicitation, requests for price increases, substantiated by verifiable manufacturer cost increases, will be allowed only on the basis of prior approval by the State Purchasing Office, and no more than one request in a 12-month period will be honored. However if price increases for any item exceed what the State Purchasing Office considers to be normal or expected the State reserves the right to seek additional competition and/or buy those products from other sources. Failure to notify the State of price increases shall result in the vendor furnishing products at the original bid price.

2.1.2. Price agreement prices represent ceiling prices for the supplies and services priced in this price agreement. The vendor shall report to the State Purchasing Office any price reduction or discount, or other more favorable terms, offered to any ordering entity (State agency, institution, or political subdivision), and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future awards. Price reductions attributable to other than volume discounts or “spot” promotional discounts will be made available to other ordering agencies via this price agreement, and such pricing shall be automatically extended to this price agreement.

2.1.3. Ordering entities (State agencies, institutions or political subdivisions) may consolidate purchases in order to take advantage of any volume discount or other, more favorable terms extended by vendor for minimum orders (if any is specified in the bid), so long as a single delivery location at the discretion of the ordering entity is specified. Where no volume discount is priced in this agreement for minimum order quantities, ordering entities may negotiate special pricing and additional discounts with the awarded vendor.

2.2. Additional Vendor Responsibilities. The awarded Vendor will be required to provide fax price quotes as requested by individual agencies. The vendor given an award from this bid must notify the State Purchasing Office immediately of any change of vendor name or address, back order problems, price changes, etc.

2.3. Product Changes/Substitutions. In the event of product deletion or modification the State Purchasing Office must be notified immediately. In such cases, vendor shall include specifications of the suggested product replacing the item, and a price offering for the replacement item. No substitutions will be allowed without prior approval of the State Purchasing Office. On substitution items, the State reserves the right not to procure the substituted items, and additionally retains the right to procure substitutions outside this Price Agreement. Throughout the term of this agreement, items may be added or deleted according to requests of the using agencies and/or usage reports.

2.4. Internet Home Page/Electronic File pricing format. Vendor will either need to maintain current pricing information, names of primary sales person and technicians on an electronic World Wide web homepage, or furnish a Word Perfect or Microsoft compatible electronic file using a

format specified by the State Purchasing Office, Division of Finance and Procurement, that contains the product list with published list prices from which discount will be deducted.

2.4.1. If the Vendor elects to maintain its own web homepage with product descriptions and pricing, Vendors will provide the URL (Uniform Resource Locator) of their homepage to the State Purchasing Office, Division of Finance and Procurement for inclusion in the State of Colorado World Wide Web site. The URL must only show the products and pricing for the particular price agreement category and/or products described in this document. Content must be pre-approved by the State Purchasing Office. The electronic file or URL must be functional within three weeks after vendor is notified of award. All prices and product lists (whether the vendor chooses an electronic format or URL) must be kept current by the vendor.

2.4.2. The State Purchasing Office, Division of Finance and Procurement reserves the right to post on the web the vendor's pricing with product descriptions (or a URL link to this information) on the Internet. (Website is: www.gssa.state.co.us).

2.4.3. Vendor must provide a complete price list in machine readable format to any State agency or institution upon their request.

2.5. Volume Reports

2.5.1. Quarterly Volume Reports. Quarterly reports are due 15 calendar days after the end of each calendar quarter. This is a mandatory requirement. Failure to provide these reports may result in the cancellation of the agreement. In addition, failure to submit volume reports as required may impact future eligibility to compete for state price agreements. These reports must be submitted to the State Purchasing Office and must contain the following information:

- a. The total dollars spent by State of Colorado agencies and institutions in conjunction with the price agreement,
- b. The total estimated dollars saved by State agencies and institutions on the price agreement for that period,
- c. The total dollars spent by State institutions of higher education (State universities and State colleges) in conjunction with the price agreement,
- d. The total estimated dollars saved by State institutions of higher education on the price agreement for that period,
- e. The total dollars spent by political subdivisions in conjunction with the price agreement,
- f. The total estimated dollars saved by political subdivisions on the price agreement, and
- g. The volume of purchase paid for with procurement card as opposed to traditional methods of payment.

2.5.2. The contractor must also provide detailed reports to any state agency requesting usage for their agency against this state price agreement

2.5.3. Comprehensive Sales History Reports. In addition, Vendor(s) receiving resulting award(s) must furnish comprehensive sales history reports to the State Purchasing Office approximately

once per year or at any time within 15 days notice from the State Purchasing Office. Comprehensive reports must contain the following information for the particular time period (normally 10 to 12 months) requested:

- a. The name of each State agency or institution, State institution of higher education and political subdivision that has made purchases and the dollar amount purchased by each agency/ subdivision in conjunction with the price agreement,
- b. The dollar amount purchased for each category listed in this bid and on resulting award, and
- c. The quantity sold of each individual product purchased on the price agreement. Failure to provide these reports may result in the cancellation of the agreement.

2.6. Price Agreement Termination.

2.6.1. Unless the Price Agreement is designated “mandatory” or specifies minimum orders that the State is required to execute, either party may terminate the price agreement upon sixty (60) days prior written notice. The vendor remains responsible for providing the reports specified in this subsection. This termination shall not affect orders placed before date of the written notice. Unless approved by the State Purchasing Office, after the date of written notice, the vendor shall not accept any new orders having performance periods extending beyond the effective date of the termination.

2.6.2. Either party may terminate the Price Agreement for default upon ten (10) days written notice. Such written shall provide the other party with a written description of the grounds for the default.

2.6.3. In the event the agreement is terminated, the State reserves the right to negotiate a replacement Price Agreement as it deems to be in the best interests of the State to provide suitable replacement availability at fair and reasonable pricing for the remaining term of the terminated Price Agreement, including any options.

2.7. Addition of Vendors

2.7.1. The State of Colorado intends to award Price Agreement(s) to vendor(s) capable of fulfilling the anticipated volume needs for the commodities and/or services specified. However, should the State determine at any time during the term of the resulting Price Agreement(s) that the number of awarded vendors is not adequate to properly fill these needs, the State reserves the right to make awards to vendors who submitted responses to the original solicitation but were not awarded, or to re-issue the solicitation and make additional awards as necessary. If the solicitation is re-issued, vendors who have Price Agreement Awards in good standing will not be required to respond.

2.8. Software Piracy Prohibition

2.8.1. No State or other public funds payable under the Price Agreement shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor shall, for the term of the Price Agreement and any extensions, have in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the Price Agreement, including, without limitation, immediate termination of the Price Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions.

3. Audit and Recordkeeping. The Vendor shall permit the State or any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and/or transcribe contractor's records during the term of this contract and for a period of one (1) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof. The Vendor shall retain records concerning orders and pricing for a sufficient period of time to permit the State to exercise its audit right under this paragraph.

4. Pricing and Credits

4.1. Unless otherwise specified in the solicitation, price agreement prices will be proposed at the same F.O.B. destination price throughout the State of Colorado.

4.2. Unless otherwise specified in the solicitation, supplies ordered under this price agreement may be returned in the original packaging by the ordering entity within thirty (30) days of delivery without assessment of a restocking or other fee.

5. Price Agreement/Orders Terms and Conditions.

5.1. Except as replaced, modified, or supplemented by the terms of this solicitation and the order, orders for supplies and commodities by State agencies and institutions will be governed by the Purchase Order and insurance terms and conditions in sections 4.1 through 4.5 of the BIDS State of Colorado Solicitation Instructions/Terms and Conditions.

5.2. The State reserves the right to negotiate and clarify the terms and conditions where there is only a negligible affect on price/cost, quality, delivery, or other performance.

5.3. Price Agreement Terms and Conditions (Services). The following price agreement terms and conditions apply to price agreements for services priced at more than \$50,000, or contracts for supplies and products exceeding \$50,000 in value and including unpriced services not incidental to the transaction.

PRICE AGREEMENT TERMS AND CONDITIONS (SERVICES)

THIS Price Agreement is made this _____ day of _____, 200_ the STATE OF COLORADO, acting by and through the State Purchasing Office, Division of Finance and Procurement, Department of Personnel & Administration, for the use and benefit of the state agencies and institutions and political subdivisions, each of whom are referred to herein as "State", or "Customer", or "Ordering Entity" as defined herein, and _____, a Corporation with offices at _____, hereinafter referred to as "contractor" or "vendor."

1. SCOPE.

1.1 General. This Price Agreement defines the unit prices or rates for services and products, supplies, or equipment ordered pursuant to the terms of this Price Agreement. Except with respect to orders place by it under this agreement, the Department of Personnel & Administration shall not be liable to contractor as a signatory to this price agreement for any breach by a State agency or other ordering entity of any payment or other obligation herein or under a purchase order or contract that orders services from this State Price Agreement.

1.2 Definitions.

"Order" shall refer to any purchase order, contract, or other authorized agreement used to order the services or products priced in this Price Agreement. An order amended consistent with the requirements of any state agency, department, institution, or political subdivision shall also be governed by the same terms and conditions.

"Ordering Entity" means the State agency, department, institution, or political subdivision that places an order.

"This contract" or "the contract" shall refer to the integrated agreement consisting of the "order" and the terms of this Price Agreement, the solicitation, and the bid or proposal.

"Products" refers to any hardware, software, or other products shown on the Price Agreement. Products has the same meaning as "commodities," "supplies," or "equipment."

"Services" shall refer to the services other than products, supplies, and equipment priced in the contractor's proposal which can be ordered by State agencies and political subdivisions.

"State agency" shall mean any department, agency, or institution of higher education of the State of Colorado, not including political subdivisions of the State of Colorado.

"Unless otherwise agreed" or "unless otherwise specified" shall mean those terms specified in the order.

1.3 Purchase Order Requirements. Whenever any order by an eligible State agency, department, institution, or political subdivision refers to this Price Agreement, the agreement between the parties shall consist of the terms of such order and this Price Agreement (including the

solicitation and the contractor's bid or proposal), except as modified consistent with this Price Agreement. The contractor shall insure that orders for services or products pursuant to this Price Agreement as a minimum specify:

- a. The supplies or equipment being delivered, if any;
- b. The place and time of delivery;
- c. A billing address; and
- d. The name, phone number, and address of the ordering entity's representative;
- e. The price, or in the case of services ordered on an hourly or other unit basis, the cost per hour or unit and the ceiling amount of the order for services being ordered.
- f. Any facilities or other property of the ordering entity to be furnished or otherwise used by the contractor during the course of performance.

1.4 Delivery. Unless otherwise agreed, any products or services ordered pursuant to the terms of this agreement shall be performed at or delivered F.O.B. destination to its designation location.

1.5 Order of Precedence. Except as otherwise specified in this agreement, the terms of this Price Agreement may not be modified or contradicted in any order by a State agency, department or institution without approval by the State Purchasing Office. Any conflict or inconsistency between the terms of an order and this Price Agreement shall be resolved by giving effect first to the terms of this Price Agreement, next to the terms of the solicitation, next to the terms of the contractor's proposal or bid, and finally to the terms of the ordering instrument (i.e. contract or purchase order).

2. PERFORMANCE PERIOD.

2.1 Total Period. This Price Agreement shall be effective from _____ through _____. The State has the option to renew the terms of this Price Agreement for _____ additional one year terms.

2.2 Placing Orders. Orders may be placed consistent with the terms of this Price Agreement during the period specified above. Orders must be placed pursuant to this Price Agreement prior to the expiration date (as amended through option exercise) but may have a delivery date or performance period up to 120 days past the then-current expiration date of this Price Agreement. The contractor is reminded that financial obligations of the State of Colorado and political subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

2.3 Order Terms. Notwithstanding the expiration or termination of this Price Agreement, the contractor agrees to perform in accordance with the terms of any orders then outstanding at such expiration or termination. The contractor shall not honor any orders placed after the expiration or notice of termination of this Price Agreement, or otherwise inconsistent with its terms. Orders from any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Price Agreement may not be placed after the expiration or notice of termination of this Price Agreement, notwithstanding the term of any such indefinite delivery order agreement.

3. PAYMENT.

3.1 Rates. The ordering entity shall pay the contractor the contract price (for products), at the order price for services priced as a firm, fixed price using Price Agreement rates, or at the hourly rates (not-to-exceed the ceiling amount) for services ordered on an hourly basis. Unless otherwise specified in the order, payments will be made based on the monthly submission of statements detailing the dates, quantity, and description of services performed and/or products delivered. Incorrect payments to the contractor due to omission, error, fraud, or defalcation may be recovered from the contractor by deduction from subsequent payments under orders or other contracts between the ordering entity and the contractor.

3.2 Renewal of Agreement. In the event of renewal of this Price Agreement, or any amendment of its terms (including prices), unless otherwise specified in the order, the contractor shall perform services in accordance with the terms of the Price Agreement current at the time of the order, and invoice at the rates in the Price Agreement in effect at the time services are performed under the order. If the parties have agreed to completion of a deliverable within an agreed not-to-exceed ceiling amount, unless otherwise agreed the contractor shall be paid at the rates in the Price Agreement in effect at the time the order was placed.

3.3 Discount/Delinquency Period. Any applicable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable products or services at the specified destination by an authorized agency representative, whichever is later.

3.4 Delinquent Payments. State law and regulations provide that vendors will be paid by State agencies within forty-five days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by special conditions specified in the order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice State ordering entities for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended)

4. INSPECTION AND ACCEPTANCE. The ordering entity reserves the right to inspect services performed or products delivered under this Contract at all reasonable times and places during the term of the Contract. If any of the services or products do not conform with Contract requirements, the ordering entity may reject nonconforming products or require the contractor to perform the services again in conformity with Contract requirements, with no additional payment. If the ordering entity elects to accept nonconforming tender, or when defects in quality or quantity of service cannot be corrected by re-performance, the ordering entity may (1) require the contractor to take necessary action to insure that the future performance conforms with the contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed or product delivered. These remedies in no way limit the remedies otherwise available to the ordering entity in this Contract or remedies otherwise available at law or equity.

5. WARRANTIES. Contractor warrants that all products or services furnished under this Contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer's recommendations or other industry standards, and will function in a failure-free manner for a period of one year from the date of acceptance of installation. Contractor shall, at its option, repair or replace any supplies or reperform any services that fail to satisfy this warranty during the warranty period. Additionally, contractor agrees to assign to the ordering entity all written manufacturer's warranties relating to the supplies and to deliver such written warranties to the customer. The existence of this or any other express warranty in this Contract shall not impair or limit the remedies otherwise granted under this Contract or available to the ordering entity at law or equity.

6. TAX EXEMPT STATUS.

6.1 State Entity. State agencies generally are tax-exempt and are not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The State's FEIN # is 84-730123K. The State's tax exemption number is 98-02565. The State is also not liable for any franchise taxes or taxes related to the income of the contractor. No taxes of any kind shall be charged to the State. Contractor is hereby notified that when materials are purchased for the benefit of State ordering entities, some political subdivisions require the vendor to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the ordering entity, nor will any prices or rates in this Price Agreement be adjusted on account of such taxes.

6.2 Political Subdivision. Contractor will accord the same tax free treatment to any Colorado political subdivision to the extent that they establish like exemption from taxes.

7. REPORTING. Contractor will submit quarterly volume reports as specified in the solicitation.

8. COMMUNICATIONS. With respect to orders placed by State ordering entities, all communications, including reports, notices, and advice of any nature, concerning administration of orders placed under this Price Agreement, must be furnished solely to the purchasing agent within the ordering entity's purchasing office, or to such other individual identified in writing in the order.

9. CONFIDENTIALITY. In the event the contractor or its employees shall obtain access to any confidential information, records or files of the ordering entity in connection with the performance of its obligations under this agreement or any order placed pursuant to this agreement, the contractor shall keep such records, files, and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the ordering entity. "Confidential information, records or files" shall not mean information which the ordering entity has denominated in writing as not confidential; or information which at the time of disclosure is in the public domain by having been printed and published and widely available to the public, e.g. information in public libraries or repositories. The contractor shall notify its employees in writing that they are subject to the confidentiality requirements set forth above.

10. FACILITIES AND/OR PROPERTY FURNISHED BY THE ORDERING ENTITY.

10.1 The ordering entity shall deliver to the contractor, for use in connection with and under the terms of the contract, the facilities or property described in the order together with any related data and information that the contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "government-furnished property").

10.2 The ordering entity and its designees shall have access at all reasonable times to the premises in which any government-furnished property is located for the purpose of inspecting the property. The contractor shall maintain an inventory and accountability system acceptable to the ordering entity, and mark or tag the property in accordance with reasonable procedures of the ordering entity.

10.3 Risk of loss. Unless otherwise provided in the order, the contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, government-furnished property or facilities upon its delivery to or use by the contractor. However, the contractor is not responsible for reasonable wear and tear to property of the ordering entity or for government-furnished property properly consumed in performing the order.

10.4 Upon completing the order, or at such earlier dates as may be fixed by the ordering entity, the contractor shall submit, in a form acceptable to the ordering entity, inventory schedules covering all items of government-furnished property not consumed in performing the contract or delivered to the ordering entity. The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the government-furnished property as may be directed or authorized by the ordering entity. The net proceeds of any such disposal shall be credited to payment due under the order or shall be paid to the ordering entity as it may direct.

11. INTELLECTUAL PROPERTY RIGHTS OF ORDERING ENTITY. Any products delivered under this contract will be owned by the ordering entity. Any software, reports, data, manuals, or other documents, drawings or materials ("works") delivered by contractor in the performance of its obligations under this contract shall be subject to an irrevocable, nonexclusive, perpetual, paid-up, transferable license to use, and permit others to use for ordering entity purposes, the software, reports, data, or other documents, drawings, or materials. The use rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

12. DATA AND DOCUMENT DELIVERABLES.

12.1 Unless otherwise specified, the contractor shall deliver by the dates specified in the order the data or documents required by the solicitation, as well as any proposed by the contractor.

12.2 It is the intent of the parties that documentation be written so persons reasonably proficient in the use of the program language or generally familiar with the type of product involved can efficiently use the documentation to understand the equipment functions, troubleshoot problems, and in the case of software, understand program structure, iterative and other control techniques, and decipher error messages should they occur. The contractor warrants that the delivered documentation will be sufficiently descriptive to enable maintenance and modification of the product consistent with their intended uses.

13. REMEDIES. Unless otherwise agreed, in addition to any other remedies provided for in the solicitation, this agreement or the order, and without limiting its remedies otherwise available at law, the ordering entity may exercise the following remedial actions if the contractor substantially fails to satisfy or perform the duties and obligations in the contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by contractor. These remedial actions are as follows:

13.1 Suspend Performance. Suspend contractor's performance pending necessary corrective action as specified by the ordering entity without contractor's entitlement to adjustment in price/cost or schedule; and/or

13.2 Withhold Payment. Withhold payment to contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

13.3 Removal of Contractor Employee/Agent. Request the removal from work on the contract of employees or agents of contractor whom the ordering entity justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract is contrary to the public interest; and/or

13.4 Deny Payment. Deny payment for those services or obligation which have not been performed and which due to circumstances caused by contractor cannot be performed or if performed would be of no value to the ordering entity. Denial of the amount of payment must be reasonably related to the amount of work or performances lost to the ordering entity.

13.5 Contract Termination. Terminate the contract for default.

The above remedies are cumulative and the ordering entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

14. TERMINATION FOR CONVENIENCE.

14.1 Subject to the terms of any minimum quantity guarantee specified in the award, this Price Agreement may be terminated by either the State or the contractor upon sixty (60) days written notice. Upon notice of termination, no orders may be accepted by the contractor with performance periods extending beyond the effective date of termination. However, subject to the right of the ordering entity to terminate, or as otherwise agreed between the parties, the contractor will perform obligations consistent with this agreement for orders in effect on the effective date of the termination.

14.2 Unless otherwise agreed, the procurement officer may, when the interests of the ordering entity (also known as "purchasing agency") so require, terminate any order, in whole or in part, for the convenience of the ordering entity. The procurement officer shall give at least twenty (20) days written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the ordering entity has breached the contract by exercise of the Termination for Convenience Clause.

14.2.1 Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor must still complete and deliver to the ordering entity the work not terminated by the Notice of Termination.

14.2.2 Compensation.

(i) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph c(iii) in this paragraph.

(ii) The procurement officer and the Contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph c(ii) of this subparagraph, the procurement officer shall pay the Contractor the following amounts, provided payments agreed to under subparagraph c(ii) shall not duplicate payments under this subparagraph:

(a) contract prices or rates for products delivered and accepted or services performed and accepted under the contract, and to the extent that the contractor has specified cancellation or termination charges, those charges, but to the extent that it has not, the costs in subparagraphs (b) and (c);

(b) costs incurred in performing services at the agreed unit price where work has been priced as a not-to-exceed to lump sum price for a completion deliverable;

(c) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of the termination claims and supporting data with respect to the terminated portion of the contract, together with reasonable storage, transportation, and other costs incurred in connection products shipped and not accepted by the ordering entity. The total sum to be paid the contractor under these subparagraphs (a), (b), and (c) shall not exceed the total contract price reduced by the amount of payments otherwise made, and the contract price of work not terminated.

(iv) Costs claimed or agreed to under this section shall be in accordance with applicable sections of the Colorado State Procurement Code.

15. TERMINATION FOR DEFAULT. The State Purchasing Office (with respect to this Price Agreement) or the ordering entity (also referred to as “purchasing agency”) through its designated procurement officer (or other authorized representative) may terminate (with respect to any order) the contract for default, and such termination shall be governed by this provision.

15.1 Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the non-performance, and if not corrected with ten (10) days of receipt of such notice, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

15.2 Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

15.3 Compensation. Payment for completed supplies delivered and accepted by the purchasing agency and for acceptable services performed and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

15.4 Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

15.5 Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

16. INSURANCE.

16.1 Standard Insurance Requirements.

16.1.1 The contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

(i) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.

(ii) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

(iii) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

(iv) Professional liability insurance with minimum limits of liability of not less than \$_____. *(To be specified in the solicitation.)*

16.1.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

16.1.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

16.1.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

16.1.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

16.1.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

16.1.7 Notwithstanding subsection A of this section, if the contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, *et seq.*, as amended (“Act”), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

17. LICENSES, PERMITS, AND RESPONSIBILITIES. Contractor certifies that, at the time of entering into this agreement, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this agreement. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this agreement and orders under this agreement, without reimbursement by the ordering entity or other adjustment in contract price. Additionally, all employees of contractor performing services shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor further certifies that, if a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or nonrenewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for contractor to properly perform this agreement or orders under this agreement, shall be grounds for termination of the contract for default.

18. GOVERNMENTAL IMMUNITY. Notwithstanding any other provision of the contract to the contrary, no term or condition of the contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, *et seq.*, C.R.S., as now or hereafter amended.

19. ASSIGNMENT AND SUCCESSORS. The contractor agrees not to assign rights or delegate duties under this agreement or orders placed under this agreement, or subcontract any part of the performance required under the agreement or orders (other than subcontractors identified in the contractor’s bid or proposal response), without the express, written consent of the State, in the case of this Price Agreement, and the ordering entity, in the case of orders placed under this Price Agreement. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, C.R.S., provided that, in the case of ordering entities who are State agencies, written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the

contractor assumes the risk that such written notice of assignment is received by the controller for the State agency, department, or institution involved

20. SOFTWARE PIRACY PROHIBITION. No State or other public funds payable under the Price Agreement shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor shall, for the term of the Price Agreement and any extensions, have in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the Price Agreement, including, without limitation, immediate termination of the Price Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions.

21. AUDIT AND RECORDKEEPING. The Vendor shall permit the State or any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and/or transcribe contractor's records during the term of this contract and for a period of one (1) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof. The Vendor shall retain records concerning orders and pricing for a sufficient period of time to permit the State to exercise its audit right under this paragraph.

22. SEVERABILITY. To the extent that the contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. Any order placed by any enrolled entity pursuant to this Price Agreement shall be severable, and the State Purchasing Office shall not be a party to any such purchase order or contract.

23. WAIVER. The waiver of any breach of a term, provision, or requirement of the contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

24. ENTIRE UNDERSTANDING. This agreement and orders placed hereunder are intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment thereto shall have any force or effect whatsoever, unless embodied herein in writing.

25. SURVIVAL OF CERTAIN CONTRACT TERMS. Notwithstanding anything herein to the contrary, the parties understand and agree that there are terms and conditions of the contract which may require continued performance, compliance, or effect beyond the termination date of the Price Agreement and order, and such terms and conditions shall survive such expiration or termination of the orders and this Price Agreement and shall be enforceable by the ordering entity in the event of such failure to perform or comply by the contractor.

26. GOVERNING LAW AND VENUE. The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Price Agreement and orders under it. Unless

otherwise agreed, venue for any action related to performance of this contract where the ordering entity is a State agency shall be the City and County of Denver.

27. COLORADO SPECIAL PROVISIONS. The following Colorado Special Provisions, required by Fiscal Rule 3-1, 1 CCR 101-1, shall be applicable to any order placed by an agency, department, or institution of the State of Colorado and shall govern in the event of any conflict or inconsistency between the terms of any order and this Price Agreement. With respect to paragraph 1 of the Special Provisions, State Controller or designee approval is not required for State purchase orders issued against this Price Agreement by State purchasing agents.

(Not for Use with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00

No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

Legal Name of Contracting Entity

BILL OWENS, GOVERNOR

By _____
Executive Director

Social Security Number or FEIN

Department of _____

LEGAL REVIEW:

Signature of Authorized Officer

Attorney General

Print Name & Title of Authorized
Officer

By _____

CORPORATIONS:

A corporate seal is required.

Attest (Seal)

By _____
(Corporate Secretary or
Equivalent, or Town/City/County
Clerk)

(Place corporate seal here, if available.)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

11 Leslie M. Shenefelt

By _____

Date _____

Attachment L

State of Oregon Participation Information and Requirements

**Note: Oregon Terms and Conditions may be subject to negotiation

STATE OF OREGON INFORMATION TECHNOLOGY SERVICES AGREEMENT

This Information Technology Services Agreement (this “Contract”) is entered into by and between the State of Oregon acting by and through its [REDACTED] (“Agency”), and [REDACTED], an [REDACTED] corporationⁱ (“Contractor”) and is effective as of the Effective Date (defined below).

RECITALS

- A. Agency desires to engage Contractor to provide [INSERT SHORT SERVICES DESCRIPTION HERE] (the “Services” as defined below) to enable Agency to achieve specific business and Agency mission objectives defined in this Contract, including implementation and testing of the System (as defined below).
- B. Contractor is the successful proposer in connection with the RFP (defined below)ⁱⁱ.
- C. Contractor desires to perform the Services for Agency.

AGREEMENT

In consideration of the foregoing recitals and the mutual terms and conditions set forth below, Agency and Contractor agree as follows:

I. DEFINITIONS.

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

“Confidential Information” is defined in Section 8.1.

“Contract” means all terms and conditions herein and all Exhibits attached hereto.

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

“COTS Software” means commercial off-the-shelf software that Contractor delivers to Agency pursuant to the Statement of Work.

“DAS” means the State of Oregon acting through its Department of Administrative Services.

“Deliverables” means all items that Contractor is required to deliver to Agency under this Contract, including Developments.

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

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

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

“DOJ” means the State of Oregon acting through its Department of Justice.

“Effective Date” means the later of (a) 200 or (b) the date on which this Contract is fully executed and approved in accordance with applicable laws, rules and regulations.

“Final Acceptance” is defined in Section 2.5.

“Hardware” means the computer hardware identified in Exhibit A, and all related Documentation, that the Contractor will deliver to Agency pursuant to the Services.

“Hardware/Software Retention Amount” is defined in Section 6.3.2.

“Intellectual Property Rights” is defined in Section 11.2.

“Key Persons” means Contractor’s Authorized Representative, the Project Manager and all other Contractor personnel designated as key persons in Exhibit F.

“Maximum Not-To-Exceed Compensation” is defined in Section 6.1.

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

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

“Project Manager” means Contractor’s representative who manages the processes and coordinates the Services with Agency’s Authorized Representative to ensure delivery of the Deliverables and completion of Milestones. Contractor’s Project Manager is the person so identified in Exhibit F.

“Proposal” means Contractor’s proposal in response to the RFP, which is attached hereto as Exhibit C.

“RFP” means the Request for Proposal attached hereto as Exhibit B.

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

“Services” means all services to be performed under this Contract.

“Services Retention Amount” is defined in Section 6.3.1.

“Statement of Work” means the Schedule of Deliverables, the payment schedule, and any other items as agreed by the parties, all attached hereto as Exhibit A.

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

“Third Party Intellectual Property” means any intellectual property owned by parties other than Agency or Contractor.

“Warranty Period” means the period that begins on the date of Final Acceptance, and ends [] calendar days after the date of Final Acceptance.

II. SCOPE OF SERVICES.

2.1 Performance and Delivery.ⁱⁱⁱ

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

2.1.2 Contractor shall deliver any Hardware to the Agency F.O.B. destination, to the destination specified in Exhibit A, in accordance with the Delivery Schedule set forth in Exhibit A. Title for the Hardware shall pass to the State of Oregon for each piece of Hardware on the date of Final Acceptance. During the period that Hardware is in transit, and up until the time that the Hardware is tendered so as to enable the Agency to take delivery of the Hardware, Contractor and its insurers, if any, relieve the Agency and the State of Oregon of the responsibility for all risk of loss of, or damage to, the Hardware. Thereafter, all risk of loss of, or damage to, the Hardware shall be borne by the State.

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

2.3 Delivery and Review of Deliverables.

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

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

2.3.3 If the Agency determines that a Deliverable does not meet [in all material respects,] the specifications or performance standards, Agency shall notify Contractor in writing of Agency's rejection of the Deliverable, and describe in reasonable detail in such notice the Agency's basis for rejection of the Deliverable. Upon receipt of notice of non-acceptance, Contractor shall, within a [15-day] period, modify or improve the Deliverable at Contractor's sole expense to ensure that the Deliverable meets [in all material respects,] such specifications or performance standards, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverable to Agency. Agency shall thereafter review the modified or improved Deliverable within [15-days] of receipt of the Contractor's delivery of the Deliverable. Failure of the Deliverable to meet [in all material respects,] the specifications and performance standards after the second set of acceptance tests shall constitute a default by

Contractor. Upon such default, Agency may either (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this section 2.3.3, or (ii) notify Contractor of such default and instruct Contractor to cease work on the Deliverable, in which case Contractor shall refund to Agency all amounts paid by Agency related to such Deliverable. Such refund shall be in addition to, and not in lieu of, any other remedies Agency may have for Contractor's default.

2.4 Acceptance Testing.

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

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

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

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

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

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

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

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

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

2.6 Warranty Period [; System Maintenance].

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

2.6.2 Long Term Maintenance. Contractor shall, [within [X] days of Final Acceptance/in accordance with the Delivery Schedule] deliver to Agency a proposed maintenance agreement that provides for maintenance of the System for a period of [X] years from the expiration of the Warranty Period for negotiation by Contractor and Agency. The proposed maintenance agreement shall comply in all material respects with the requirements for maintenance and support set out in the RFP.^{vi}

III. CHANGE CONTROL PROCEDURES.^{vii}

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

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

3.2.1 The date of issuance of the Change Order;

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

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

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

3.2.5 The cumulative cost of all Change Orders previously issued.

A Change Order shall alter only that portion of the Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Contract. No Services shall be performed pursuant to the Change Order and no payment shall be made on account of the Change Order until the Change Order is fully executed and approved as set forth in Section 19.15.

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

IV. CONTRACTOR'S PERSONNEL.

4.1 Project Manager. Contractor shall designate one of the Key Persons as Project Manager for the Services. The Project Manager shall be familiar with Agency's business operations and objectives, shall perform the Services in accordance with the warranties set forth in Article IX of this Contract. The Project Manager will participate with

Agency in periodic review sessions and will provide at Agency's request detailed progress reports that identify completed tasks and the status of the remaining Services.

4.2 Contractor's Employees and Subcontractors. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by Agency. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in Article IX of this Contract.

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

V. TERM.

This Contract shall be effective on the Effective Date, and shall terminate on the later of the expiration of the Warranty Period, or _____, 200_.

VI. PAYMENT.

6.1 Maximum Payment Amount. Notwithstanding any other provision of this Contract to the contrary, the maximum, not-to-exceed compensation that Agency will pay to Contractor is _____ Dollars (\$_____) (the "Maximum Not-To-Exceed Compensation"), which includes payment for any allowable expenses for which Contractor may request reimbursement under this Contract.

6.2 Payments.^{viii}

6.2.1 Payment for Services. Subject to Sections 6.3 and 6.5, Agency shall pay Contractor for each Deliverable delivered pursuant to the Statement of Work and accepted by Agency the lesser of (a) the number of Contractor hours devoted to that Deliverable for each Contractor employee or subcontractor multiplied by the applicable hourly billing rate identified in [Exhibit A/Exhibit F] or (b) the "not-to-exceed" amount associated with that Deliverable set forth in the Statement of Work.^{ix}

6.2.2 Payment for Hardware.^x Subject to Sections 6.3 and 6.5, Agency shall pay Contractor for Hardware delivered under this Contract upon [Agency's acceptance of the Hardware /Final Acceptance], in the amount set forth in the Statement of Work for the Hardware.

6.2.3 Payment for COTS Software.^{xi} Subject to Sections 6.3 and 6.5, Agency shall pay Contractor for COTS Software delivered under this Contract upon [Agency's acceptance of the COTS Software/Final Acceptance], in the amount set forth in the Statement of Work for the COTS Software.

6.3 Retention Amount.

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

6.3.2 Retention Amount for Hardware and COTS Software. Agency shall in all events be permitted to hold back an amount (the "Hardware/Software Retention Amount") of not more than ten percent (10%) of any amount payable to Contractor pursuant to Section 6.2 for Hardware and COTS Software. Agency shall pay the accrued Hardware/Software Retention Amount for the applicable item of Hardware or COTS Software within 30 days of [Agency's acceptance of the Hardware or COTS Software according to acceptance criteria and processes set forth in this Contract/Final Acceptance].

6.4 Expenses. Agency will not pay any expenses incurred by Contractor during the completion of the Services.^{xiii}

6.5 Invoices. Agency shall pay Contractor not more than once each month upon Contractor's submission of a detailed invoice that sets forth the Services performed and goods accepted by Agency. Such invoices shall comply with the requirements of Sections 6.2, 6.3, and 6.4 and shall describe all goods delivered and all Services performed with particularity and by whom they were performed, including name and job title, reference to the specific activity in the Statement of Work, number of hours spent completing the Services, and shall itemize and explain all expenses for which reimbursement is claimed. Contractor shall request payment only for goods or Services that represents completion of specific Milestones or Deliverables.^{xiv} The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall submit invoices to Agency's Authorized Representative. Agency will have the right to review each such invoice for compliance with the requirements of this Section 6.5 and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462.

6.6 Limit on Payments. Contractor shall not submit invoices for, and Agency shall not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Contract, pursuant to Section 19.15, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or goods delivered before the Effective Date or after termination of this Contract, as it may be amended from time to time, in accordance with its terms.

VII. OWNERSHIP AND LICENSE IN DELIVERABLES.

7.1 Original Works.

7.1.1^{xv}

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

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

elements of the Third Party Intellectual Property employed in the Development, and to authorize others to do the same on Agency's behalf.

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

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

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

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

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

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

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

[ALTERNATIVE PROVISIONS]^{xvi}

VIII. CONFIDENTIALITY AND NON-DISCLOSURE.^{xvii}

8.1 Confidential Information. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information [of any form obtained by/clearly marked confidential, or identified as confidential in a separate writing as confidential that Agency provides to] Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of Agency ("Confidential

Information”). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than Agency without the obligation of confidentiality, (e) is disclosed with the written consent of Agency, or; (f) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

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

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

8.4 Publicity. Contractor agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Agency.

IX. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES.

9.1 General Representations and Warranties. Contractor represents and warrants to Agency that:

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

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

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

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

9.1.5 Contractor's performance under this Agreement creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Agreement.^{xviii}

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

9.2 Contractor's Performance Warranties. Contractor represents and warrants to Agency that:

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

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

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

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

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

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

X. LIMITATION OF LIABILITY.

10.1 EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 11.1, (ii) SECTION 11.2, OR (iii) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE GREATER OF (i) \$ _____, OR (ii) [TWICE/ONE AND ONE HALF TIMES] THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THE CONTRACT.

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

XI. INDEMNITIES.

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

11.2 IP Indemnity. In addition to and without limiting the generality of Section 11.1, Contractor expressly agrees to, indemnify, defend and hold the State of Oregon and its agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Deliverables or the System or use thereof infringe any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, “Intellectual Property Rights”) of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party’s Intellectual Property Rights, Contractor may upon receipt of Agency’s prior written consent, which Agency shall not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Agency the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the System continues to function in [material] conformance with the specifications set forth in this Contract. Contractor’s failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract, and Agency may pursue any rights and remedies available to it under this Contract, including termination. Contractor shall not be liable under this section for any claim for infringement based solely on the following:^{xxi}

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

11.3 Control of Defense and Settlement. Contractor’s obligation to indemnify Agency as set forth in Sections 11.1 and 11.2 is conditioned on Agency providing to Contractor prompt notification of any claim or potential claim of which Agency becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 11.1 or Section 11.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon’s interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

11.4 Damages to State Property and Employees. Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property of the State of Oregon or any of its employees resulting from, arising out of, or relating to

the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract

XII. INSURANCE,^{xxii}

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

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

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

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

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

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

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

XIII. Events of Default.

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

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

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

13.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not

cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of Agency's notice or such longer period as Agency may specify in such notice.

13.2 Default by Agency. Agency shall be in default under this Contract if:

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

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

XIV. Remedies for Default.

14.1 Agency's Remedies. In the event Contractor is in default under Section 13.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, which include, without limitation:

14.1.1 termination of this Contract under Section 15.2;

14.1.2 withholding all monies due for Services that Contractor is obligated but has failed to perform within thirty (30) days after Agency has notified Contractor of the nature of Contractor's default;

14.1.3 with respect to Hardware and COTS Software for which Agency has paid before Final Acceptance, returning the Hardware and COTS Software to Contractor for which Agency has paid in exchange for a return of all moneys previously paid for such Hardware and COTS Software, and

14.1.4 initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

14.1.5 exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Sections 13.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 15.1.

14.2 Contractor's Remedies. In the event Agency terminates this Contract as set forth in Section 15.1, or in the event Agency is in default under Section 13.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 15.3, Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the hours worked but not yet billed with respect to each Deliverable, up to the not-to-exceed amount for the Deliverable set forth in the Statement of Work; authorized expenses incurred, less previous amounts paid and any claims which Agency has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.2, Contractor shall pay any excess to Agency upon written demand.

XV. Termination.

15.1 Agency's Right to Terminate. Agency may, at its sole discretion, terminate this Contract, as follows:

15.1.1 Agency may terminate this Contract for its convenience upon thirty (30) days' prior written notice to Contractor.

15.1.2 Agency may terminate this Contract if Agency fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's services;

15.1.3 Agency may terminate this Contract if Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited or Agency is prohibited from paying for such Services from the planned funding source;

15.2 Agency's Right to Terminate for Cause. In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract, in whole or in part, immediately upon Contractor's default under Section 13.1.

15.3 Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon Agency's default under Section 13.2

15.4 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation Agency's Confidential Information or any Deliverables for which Agency has made payment in whole or in part) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Any property or Deliverable returned or delivered to Agency pursuant to this Section shall be provided without the warranties set forth in Section 9.2.2, unless, with respect to Deliverables, Agency has accepted the Deliverable pursuant to Section 2.3.

XVI. INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING.

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

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

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

XVII. COMPLIANCE WITH APPLICABLE LAW.

17.1 Compliance with Law Generally. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing,

Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.^{xxiv}

XVIII. DISPUTE RESOLUTION.

18.1 Litigation. Any claim, action, suit, or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 18.1.

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

XIX. MISCELLANEOUS PROVISIONS.

19.1 Order of Precedence. This Contract consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Contract, less its Exhibits; (b) the Statement of Work, Exhibit A; [(c) the RFP, Exhibit B; (d) the Proposal, Exhibit C;]^{xxv} and (e) Exhibits D, E, F, G and H. The aforementioned Exhibits are by this reference incorporated in the Contract.

19.2 Recycling. Contractor shall, to the maximum extent economically feasible in the performance of the Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

19.3 Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Services required by this Contract or assign or transfer any of its interest in this Contract without Agency's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of Agency. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

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

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

19.7 Records Maintenance; Access. Contractor shall maintain all financial records and other records relating to its performance under this Contract in accordance with generally accepted accounting principles and in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of three (3) years, or such longer period as may be required by applicable law, following termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

19.8 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon before entering into this Contract.

19.9 Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations and declarations set forth in Articles VI, VII, VIII, IX, X, XI, XIV, XV, XVI and XVIII, and Sections 16.3, 19.1, 19.4, 19.5, 19.7, 19.9, 19.12, 19.13, 19.18, 19.19, 19.20 and 19.21.

19.10 Time Is of the Essence. Contractor agrees that time is of the essence under this Contract.

19.11 Force Majeure. Neither Agency nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19.12 Notices. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor at the address or number set forth on Exhibit F, and to Agency at the address or number set forth on Exhibit G, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 19.12. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to the Agency Authorized Representative. Any communication or notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative.

19.13 Severability. The parties agree that if any term or provision of this Contract 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

19.14 Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

19.15 Amendments. This Contract may be amended, modified, or supplemented only by a written amendment signed by Agency and Contractor that has been approved by DAS and DOJ, if required by applicable law. Any amendment that provides for additional goods or services may only provide for goods or services directly related to the scope of goods and services described in the RFP, and no amendment shall be effective until all requisite signatures and approvals are obtained.

19.16 Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.

19.17 Waiver. The failure of either party to enforce any provision of this Contract or the waiver of any violation or nonperformance of this Contract in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties and, with respect to Agency's waiver or consent all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

19.18 Headings. The headings in this Contract are included only for convenience and shall not control or affect the meaning or construction of this Contract.

19.19 Integration. This Contract and attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract.

19.20 No Partnership. This Contract is not intended, and shall not be construed, to create a partnership or joint venture between Agency and Contractor. Nothing in this Contract shall be construed to make Agency and Contractor partners or joint venture participants.

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

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY AGENCY APPROVALS.

EXHIBIT A

STATEMENT OF WORK

EXHIBIT B

THE RFP

EXHIBIT C

CONTRACTOR'S PROPOSAL

EXHIBIT D

CONTRACTOR DATA AND TAX CERTIFICATION

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

Federal Tax Number _____

Oregon Tax Number _____

Contractor Signature _____ Date _____

EXHIBIT E
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR
(Contractor completes if Contractor is not a corporation or is a professional corporation.)

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following:)**
 - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
 - C. Telephone listing is used for the business that is separate from the personal residence listing .
 - D. Labor or services are performed only pursuant to written contracts.
 - E. Labor or services are performed for two or more different persons within a period of one year.
 - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

(Agency completes B below when Contractor completes Section A above.)

B. AGENCY APPROVAL.

ORS 670.600. Independent Contractor Standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if the standards of this section are met. Agency certifies the contracted work meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Agency Signature _____ Date _____

(Agency’s certification is solely for the Agency’s benefit and internal use

EXHIBIT F

CONTRACTOR'S PERSONNEL

Authorized Representative:

Project Manager:

Other Key Persons:

EXHIBIT G

AGENCY PERSONNEL

Authorized Representative:

Project Manager:

EXHIBIT H

LICENSE FOR COTS SOFTWARE

EXHIBIT I

PROVISIONS REQUIRED BY FEDERAL LAW

**DO NOT USE
WITHOUT FIRST
CONSULTING WITH
DOJ**

Without limiting the generality of section 17.1 of the Contract, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. For purposes of this Contract, all references to federal laws are references to federal laws as they may be amended from time to time.

(1) Equal Employment Opportunity. If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(2) Clean Air, Clean Water, EPA Regulations. If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Agency, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

(3) Energy Efficiency. Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(4) Truth in Lobbying. The Contractor certifies, to the best of the Contractor's knowledge and belief that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(5) HIPAA Compliance. If the work performed under this Contract are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, work performed under this Contract is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

A. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and Agency for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Agency Privacy Rules, OAR 410-014-0000 *et. seq.*, or the Agency Notice of Privacy Practices, if done by Agency. A copy of the most recent Agency Notice of Privacy Practices is posted on the Agency web site at <http://www.dhs.state.or.us/admin/hipaa/project/privforms.htm>, or may be obtained from Agency

B. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with Agency in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with Agency and shall comply with the Agency EDI Rules.

C. Consultation and Testing. If Contractor reasonably believes that the Contractor's or the Agency's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the Agency's HIPAA officer. Contractor or Agency may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the Agency's testing schedule.

D. If Contractor is deemed to be a business associate of Agency under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164, Contractor hereby provides Agency with satisfactory assurances that if it receives from Agency or any trading partner any protected health information of any individual, it shall maintain the security and confidentiality of such information as required by the HIPAA's Privacy Rule, and other applicable laws and regulations. Without limiting the foregoing, Contractor agrees that:

- (a) Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Contract or as required by law;
- (b) Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Contract;
- (c) Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Contract;
- (c) Contractor will report to Agency any use or disclosure of PHI not provided for by this Contract of which Contractor becomes aware;
- (d) Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;
- (e) Contractor shall make available to Agency such information as they may require to fulfill their obligations to account for disclosures of such information;
- (f) Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Agency or trading partner (or created or received by Contractor on behalf of Agency or trading partner) available to Agency and to the Secretary of the United States Department of Health and Human Services, for purposes of determining Agency's or trading partners' compliance with HIPAA; and
- (g) if feasible, upon termination of this Contract, Contractor shall return or destroy all PHI received from Agency or trading partners (or created or received by Contractor on behalf of Agency or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Contract

to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

Subject to the foregoing restrictions, Agency agrees that Contractor may use such PHI in the process of providing transaction mapping, trading partner profiling and training and mentoring services for Agency and trading partners under this Contract.

(6) Resource Conservation and Recovery. Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

(7) Substance Abuse Prevention and Treatment. Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64).

(8) Audits. Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

(9) Debarment and Suspension. Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

(10) Medicaid Compliance. To the extent Contractor performs any work whose costs are paid in whole or in part by Medicaid, Contractor shall comply with and cause its subcontractors to comply with the federal and state Medicaid statutes and regulations applicable to the work, including but not limited to:

A. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to Agency, the Medicaid Fraud Control Unit of the Oregon Agency of Justice and the Secretary of Health and Human Services;

B. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;

C. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and

D. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

(11) ADA. Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work.

(12) Pro-Children Act. Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

COMMENTS AND ADDITIONAL AND ALTERNATIVE TERMS AND CONDITIONS

MISCELLANEOUS PROVISIONS

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

ⁱ If Contractor is not a corporation, then revise accordingly.

ⁱⁱ Include only if the Contract is the result of an RFP.

ⁱⁱⁱ If Contractor will not be delivering Hardware, use the following alternative:

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

^{iv} A slightly different alternative provision:

2.4.3 Acceptance Period. Upon completion of Initial System Testing, Agency shall use the System for the transformation and processing of System data in a live production environment. Within **XX** days of the first day of such operation, Agency shall notify Contractor in writing that either (i) Agency has completed acceptance testing and confirmed that the System **[meets/materially complies with]** the specifications set forth in this Contract, or (ii) notify the Contractor in writing that the System **[does not meet/does not materially comply with]** the specifications set forth in this Contract, specifying the manner in which the System fails to meet those specifications. Upon receipt of a written notice specifying a failure, Contractor shall correct any such failure within five (5) business days from the date of receipt of Agency' notice or such date as Agency shall specify in its notice, and shall resubmit the System to Agency for reevaluation in accordance with this Section, all at no additional charge to Agency. Thereafter, if the System fails to conform or perform as required, Agency may allow Contractor to continue to correct the System or Agency may declare a material breach of this Contract by Contractor.

^v A more detailed alternative:

2.6.1 Warranty Period. With respect to each notice from Agency to Contractor during the Warranty Period that notifies Contractor that the System or any Deliverable does not meet the warranties or specifications set forth in this Contract, the Contractor shall, at no cost to Agency, promptly:

A. Repair and correct the System or Deliverable that is not adequately performing regardless of the fact that the Agency may have accepted the System or Deliverable in that condition; and

B. Provide Agency with all new materials with respect to such repaired or corrected System or Deliverable, including but not limited to, new master program disks (or other media acceptable to Agency) and any other new Documentation appropriate to the repair.

^{vi} There are a couple of alternatives to this provision. First, if Agency plans to maintain the System in-house, then this provision is not necessary at all, and need not be included. Second, if there is no RFP, or if no there are no maintenance requirements in RFP, then replace the last sentence with this alternative provision. "The proposed maintenance agreement shall comply in all material respects with the following requirements: [LIST REQUIREMENTS]." If Agency takes this approach, then the Contract should set forth the Agency's minimum requirements for maintenance (response times/availability/error classification/delivery of upgrades/etc.]. Finally, if, as a result of the RFP or otherwise, Agency and Contractor have already entered into a separate agreement for maintenance, then the provisions should say: "Contractor shall provide long-term maintenance for the System in accordance with the separate [name of agreement] entered into between Agency and Contractor on or about _____, 200_."

vii This provision provides that only Agency may make change requests:

3.1 Written Change Requests. Agency may request a change to this Contract, including all Exhibits hereto, by submitting a written change request to Contractor describing the change requested.

3.2 Analysis of Change Requests; Change Orders. Upon receipt of a change request, Contractor shall analyze such change request to determine the effect that the implementation of the change will have on the Statement of Work. If the change request specifies changes in the design or implementation of the System to enable the System to meet the requirements of the Statement of Work, such changes will be made at no cost to Agency, unless such changes are due to the failure of Agency or its agents to perform its or their responsibilities in a timely manner. Following its analysis of the change request, Contractor shall prepare a written change order, detailing all modifications to the scope, price, Delivery Schedule or other terms (the "Change Order"), will be prepared. A Change Order at a minimum shall contain the following information:

3.2.1 The date of issuance of the Change Order;

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

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

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

3.2.5 The cumulative cost of all Change Orders previously issued.

A Change Order shall alter only that portion of the Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Contract. Both parties must sign the Change Order to authorize the Services described therein and incorporate the changes into this Contract. No Services shall be performed pursuant to the Change Order and no payment shall be made on account of the Change Order until the Change Order is fully executed and approved as described in Section 19.15.

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

viii Use the following if Agency is paying fixed prices for Deliverables:

6.2 Payment of Fixed Prices. Subject to the requirements of Sections 6.3 and 6.5 Agency shall pay Contractor for each Deliverable delivered pursuant to the Statement of Work and accepted by Agency the fixed price for that Deliverable set forth in the Statement of Work.

ix The following addition to Section 6.2.1 allows Contractor to bill over a Deliverable NTE on a particular Deliverable, so long as its invoices for all of the Deliverables that comprise a Milestone do not exceed the Milestone NTE.

“Notwithstanding the foregoing, Contractor may request payment for completion of a Deliverable in excess of the not-to-exceed payment for the Deliverable; however, under no circumstances shall the cumulative payments for all Deliverables that collectively comprise a Milestone exceed the not-to-exceed compensation for that Milestone set forth in the Statement of Work.”

x Use if Agency will be buying and paying for Hardware under the Contract.

xi Use if Agency will be buying and paying for COTS Software under the Contract.

xiii Or, “within thirty (30) days following the conclusion of the Warranty Period.”

^{xiii} If Agency will pay expenses, use the following. Confirm that the provision accurately describes only the expenses for which Agency will reimburse:

6.4 Payment for Expenses. Agency will reimburse the Contractor for reasonable costs and expenses only as follows:

6.4.1 Miscellaneous Costs. Agency will reimburse the Contractor for reasonable and actually incurred document coding and scanning fees; long distance telephone calls; operator-assisted conference calls; postage and courier services, and long-distance facsimile, at the Contractor's actual costs.

6.4.2 Travel Expenses. Agency will reimburse Contractor for reasonable and necessary travel expenses as follows:

Agency shall reimburse Contractor for mileage for travel in a private automobile, while a Contractor employee is acting within the course and scope of his/her duties under this Contract and driving over the most direct and commonly-traveled route, at a rate of 25 cents per mile. To qualify for mileage reimbursement, the Contractor employee must hold a valid current driver's license for the class of vehicle driven, and carry personal automobile liability insurance in amounts not less than those required by (i) the Oregon Financial Responsibility Law (ORS 806.060) or (ii) the jurisdiction in which the vehicle is being operated, whichever is greater. No mileage reimbursement will be paid for the use of motorcycles or mopeds. Contractor understands and agrees that Agency's obligation to reimburse Contractor for travel expenses is subject to any additional restrictions established in the Oregon Accounting Manual, available from the Oregon Department of Administrative Services State Controller's Division <http://scd.das.state.or.us/policy/oam.htm>.

Agency will not reimburse Contractor for meals, lodging, in-state or out-of state travel expenses except upon the prior written approval of the Agency's Authorized Representative, and only in compliance with the Oregon Accounting Manual.

6.4.3 Other Costs and Expenses. The Contractor will obtain separate written approval of the Agency's Authorized Representative or designee for any exceptions to the provisions of this Section 6.4.

6.4.4 Expenses Included in Maximum Compensation. All expenses payable pursuant to this Section 6.4 are included in the Maximum Not-To-Exceed Compensation set forth above.

^{xiv} Delete this sentence if the payment is for other than completed Milestones or Deliverables.

^{xv} Agency should choose either Option 1 or Option 2. In any case, Contractor gives a broad license in contractor intellectual property (i.e.-not original under the Contract) delivered under the Contract, and; Contractor secures in the Agency's name and on the Agency's behalf a broad license in third party intellectual property. License terms for COTS software should be negotiated separately.

Under Option 1, Agency retains ownership of original work product created under the Contract. Under Option 2, Agency and Contractor agree that Contractor will retain ownership of Developments, and will give Agency broad license rights to exploit the Development.

OPTION 1

7.1.1 Each Development created by Contractor as an original work pursuant to the Services, including derivative works and compilations, and whether or not such Development is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Contractor agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason an original Development created pursuant to the Services is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Developments created pursuant to

the Services, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall immediately disclose to Agency each material new Development, or make such Development known in the course of performing the Services under this Contract, and hereby assigns to Agency, without additional compensation, any and all right, title and interest that Contractor may have or acquires in each such Development, including patent rights. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to original Developments created pursuant to the Services, 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.

OPTION 2

7.1.1 Contractor shall be the owner of each Development created by Contractor as an original work pursuant to the Services, including derivative works and compilations. Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Development, and to authorize others to do the same on Agency's behalf.

^{xvi} Agency may want to consider adding the following provisions:

THIRD PARTY SOFTWARE

7.X Third Party Software. Contractor shall secure for Agency, in Agency's name, any and all necessary sublicenses, assignments or direct licenses for any Third Party Software, in object code form, to be held by Agency in perpetuity; such sublicenses or direct licenses shall be subject to the same terms and conditions of scope, use and access as Contractor's Intellectual Property. In addition, at no cost to Agency, Contractor shall secure and administer for Agency any and all maintenance agreements for such Third Party Software, which also shall be subject to the same terms and conditions as maintenance on Contractor's Intellectual Property, and which shall include, but not be limited to, software upgrades.

LICENSE TO DEVELOPMENTS (For use when Agency grants Contractor a license in Developments)

7.x License to Developments. Agency irrevocably grants to Contractor a perpetual, worldwide, fully paid up, nonexclusive right and license to copy, prepare derivative works based on, deliver, publish, perform, display, dispose of, modify, improve, use and sublicense the Developments; provided that such license is at all times subject and subordinate to the confidentiality and nondisclosure provisions of this Contract.

SOFTWARE ESCROW

The following is one way the Agency can set up an escrow for software source code. A preferred method might be to establish the requirement for escrow of source code in the RFP, and then enter into a separate escrow agreement at the same time as the parties enter into this Contract. Note that this provision assumes that Contractor, and not a third party, is licensing the software to the Agency. If a third party is licensing the software that will be the subject of the escrow, then use an alternative provision.

7.8.1 Within thirty (30) days of execution of this Contract, Contractor shall propose to Agency a mutually agreeable, commercially reasonable arrangement to escrow:

A. The source code for the COTS Software and other such applications, including Contractor Intellectual Property and Third Party Intellectual Property (collectively, the "System Software") as are required for the System to function, in such format that will allow Agency to build and compile useful object code;

B. Any and all updates, modifications, revisions, and enhancements of the System Software;

C. Any and all Documentation pertaining to source code for the System Software, including the technical specifications and documents, data conversion guidelines and instructional tools (collectively, all items identified in subsections A through C shall be referred to as "Deposited Programs").

7.8.2 Upon the Parties' acceptance and written approval of such proposed escrow arrangement and its approval by DAS, DOJ and the U.S. Government if required, Contractor and Agency shall promptly execute a three party escrow agreement with the selected escrow agent which shall govern the terms of the escrow arrangement. The escrow agreement shall authorize the escrow agent to release the Deposited Programs to Agency upon the occurrence of any of the following:

A. Source code for any or all material part of the Deposited Programs is generally made publicly available by Contractor, with or without additional cost, to other users of comparable software; or

B. The Contractor's cessation, for any reason, to do business; or

C. The Contractor discontinues offering maintenance services for the Deposited Programs; or

D. The Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, and same has not been discharged or terminated without any prejudice to Agency's rights or interests under this Contract within thirty (30) days; or

E. Any other event or circumstance occurs that demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to Agency under this Contract, the escrow agreement or any maintenance or support agreement between the parties.

7.8.3 Agency shall pay the fees of the escrow agent. The copies of the Deposited Programs placed in escrow shall be reproduced and maintained on magnetic tape or disk using a commonly accepted data recording protocol. When a change is made to the Deposited Programs by or on behalf of the Contractor, during the term of the escrow agreement, the revised Deposited Programs, including the change, shall be delivered to the escrow agent not later than sixty (60) days after the change is effected by or on behalf of the Contractor. Contractor shall allow Agency to periodically examine the escrowed source code for the Deposited Programs to verify it is current and complete;

7.8.4 Upon receipt of the Deposited Programs by Agency pursuant to the escrow agreement entered into under this Section 7.8, Agency shall treat the Deposited Programs as confidential information to the fullest extent authorized by the Oregon Public Records Law. Notwithstanding such delivery to Agency, the Deposited Programs shall remain the property of Contractor or its successor, unless ownership is specifically transferred to Agency by Contractor or its authorized agent. Upon release of the Deposited Programs as provided for herein, Agency and its consultants and contractors, shall have a perpetual, irrevocable license to use, reproduce, prepare derivative works based on, perform and display the Deposited Programs in conjunction with and to update, modify and otherwise support the System.

^{xvii} Use the following to establish reciprocal obligations of confidentiality:

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

8.2 The recipient of Confidential Information agrees to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own Confidential Information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than as contemplated by this Contract or reasonably related thereto, including without limitation the use by Agency of contractors who need to access or use the System for any valid business purpose, and to advise each of its employees and contractors of their obligations to keep Confidential Information confidential.

8.3 Each party shall use [its best/commercially reasonable] efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall

advise the other immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.

8.4 Each party agrees that, except as provided in this Contract or directed by the other, it will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Contract each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.

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

8.6 Contractor agrees to comply with all reasonable requests by Agency to ensure the confidentiality and nondisclosure of Agency's Confidential Information, including without limitation (a) obtaining nondisclosure agreements from Contractor's employees and agents who are performing Services and providing copies of such agreements to Agency, and (b) performing criminal background checks on each of Contractor's employees and agents who are performing Services, and providing a copy of the results to Agency.

8.7 Agency's obligations under this Article VIII shall be subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505.

8.8 Publicity. Contractor agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Agency.

^{xviii} See 46 Or. Op. Atty. Gen 350 for a discussion of when a contractor may be subject to some provisions of ORS Chapter 244.

^{xix} The additional provision below (to be added to the existing provision if chosen) requires the Agency to establish standards against which it will measure Contractor's performance. The standards provided are examples, and it is up to Agency to choose what standards it uses to conduct its IT work.

“and will otherwise perform the Services in accordance with the following standards:

9.2.1.1 Contractor shall comply with the requirements set forth in DAS Oregon Statewide IT Policies (as last issued October 16, 2001) and attached hereto as Exhibit **[X]**, as those policies are amended from time to time;

9.2.1.2 Contractor shall comply with the standards established by the Project Management Institute's (PMI) Standard as described in the Project Management Body of Knowledge (PMBOK), the Software Engineering Institute and the Control Objectives for Information and related Technology (COBIT®) objectives.”

^{xx} Agency may also include the following specific warranties in Section 9.2.2 by adding the following to the end of that section:

Contractor specifically represents and warrants that:

- (1) the System's computer hardware and software components will, individually and in combination, correctly process, sequence, and calculate all date and date related data for all dates prior to, through and after January 1, 2000;
- (2) any software products delivered under this Contract that process date or date related data will recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century; and
- (3) the System properly exchanges all date and date related data with any hardware or software in the Operating Environment that is used in combination or interfaces with the System;
- (4) During the Warranty Period the System shall:
 - (a) be free from defects of material and workmanship under normal use and remain in good working order;
 - (b) function in all respects in accordance with specifications set forth in this Contract, including those set forth in the RFP, the Proposal and the Statement of Work; and
 - (c) enable Agency to meet all applicable federal, state and local laws and regulations;
- (5) The System will be developed for use in the Operating Environment; that the Operating Environment is suitable for System operations; and that the installation and operation of the System will not adversely affect the functions or

operations of any other hardware or software that interfaces with the System or the Operating Environment; and
(6) Any Hardware delivered by Contractor shall be subject to manufacturer's warranties to the extent required by this Contract, including the RFP, and that such warranties shall be fully transferable to Agency.

In addition, if the System components are not all supplied by Contractor, then it may be appropriate to condition Contractor's warranties of the System's performance on proper functioning of those individual components. Consult counsel to assist in determining if such a warranty is appropriate, and to assist in drafting.

^{xxi} The list of exceptions below may be modified by Agency.

^{xxii} Workers Compensation Insurance is required. Agency must choose the types and amount of coverage for other insurance.

^{xxiii} If Agency has particular concerns about the scope of coverage, Agency may add the following sentence: If requested, complete copies of insurance policies shall be provided to Agency.

^{xxiv} If the payments under the contract are being made in whole or in part with federal funds, then it may be necessary to include certain provisions required by federal law. If so, use the following provision:

17.2 Compliance with Federal Law. Without limiting the generality of the foregoing, Contractor shall comply with the Federal Laws set forth in Exhibit I, which is attached hereto and incorporated herein by this reference."

See Exhibit I for an example. Do not use this without confirming with counsel that it is necessary and complete. Terms required by federal law may vary depending on the federal funding source.

^{xxv} **AGENCY USER**-it may be appropriate to include additional Exhibits if additional documents are necessary to describe Contractor's obligations, or it may not be necessary to use all of the Exhibits listed here. Consult with DOJ/DAS if you have any questions.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

CONTRACTOR

By: _____ Title: _____ Date: _____

Facsimile number: _____ Federal Tax Number _____

Oregon/State Tax Number _____

AGENCY

Authorized Signature: _____ Title: _____ Date: _____

Approved by the Department of Administrative Services:
(Required for Contracts in excess of \$ 150,000) Authorized Signature _____ Date _____

Other Required Signature: _____

Other DAS Division or Agency Name/Title _____

DAS or Other Agency Signature _____ Date _____

Approved for Legal Sufficiency _____

Assistant Attorney General _____ Date _____
(Required for Contracts in excess of \$ 75,000)