State of Oregon
Personal/Professional Services Contract
INFORMATION TECHNOLOGY- SYSTEM ACQUISITION
Web-Based Computer-Adaptive Testing System

This Contract is between the State of Oregon, acting by and through its Oregon Department of Education, hereinafter referred to as "ODE" or "Agency," and the American Institutes for Research in the Behavioral Sciences, a Pennsylvania non-profit corporation with its principal offices located at 1000 Thomas Jefferson Street, NW, Washington, DC 20007, hereinafter referred to as "Contractor."

RECITALS

A. Agency desires to engage a contractor to provide a Web-Based Computer-Adaptive Testing System as set forth in the Statement of Work to enable Agency to achieve specific business and Agency mission objectives as defined in this Contract, including implementation and testing of the System (as defined below). To that end, Agency issued RFP **ODE-1249-12**.

B. Contractor is the successful Proposer to the RFP and Agency desires to engage Contractor to perform the Services.

C. Contractor desires to perform the Services for Agency.

D. Agency issues this Contract under authority of ORS 279A.050(6)(L).

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

1. DEFINITIONS

The terms below have the following meanings:

"Acceptance" or "Accepted" means written confirmation by Agency that Contractor has completed a Deliverable according to the Acceptance Criteria and it is accepted for purposes of interim payment. The term is distinct from "Final Acceptance."

"Acceptance Criteria" means the criteria for accepting Deliverables required by this Contract, including but not limited to all specifications and requirements in the Statement of Work, and the Performance Warranties set forth in Section 8.2 of this Contract.

"Acceptance Tests" means those tests which are intended to determine compliance of Deliverables with the Acceptance Criteria of this Contract.

"Accessible Portable Item Protocol (APIP) Standard" means the standard for the development and exchange of test items for learners with special needs. (See http://www.apipstandard.org/default.htm.)

"Agency Intellectual Property" means any intellectual property that is owned by Agency. Agency Intellectual Property includes any derivative works of any Agency Intellectual Property.

"Artificial Intelligence (AI) Scoring Engine" means a machine scoring engine using artificial intelligence to score test responses. An AI scoring engine emulates human scorers.

"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 E of this Contract. Agency's Authorized Representative is the person so identified in Exhibit F of this Contract.

"Business Days" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding State of Oregon holidays and business closure days.

Computer Adaptive Test (CAT) Engine means a software system with ability to automatically adjust the difficulty level of test questions based on student responses. An adaptive test engine has the ability to automatically determine which questions should be delivered next based on the previous response.

"Change Order" means a form of Contract amendment pursuant to Section 17.16 of this Contract that makes changes or modifications to the Statement of Work within the scope of this Contract as further defined in Section 17.16.3.2.

"Confidential Information" is defined in Section 7.1 of this Contract.

"Contract" means this Personal/Professional Services Contract, including all terms and conditions contained herein and all Exhibits attached thereto.

"Contract Year" means a 12 (twelve) month period of service, with the exception of "Year 1." Contract Years are set in Exhibit L, Payment Schedule. "Year 1" runs from the Effective Date through June 30, 2014, which is less than a 12 (twelve) month period of service.

"Contractor Intellectual Property" means any intellectual property that is owned or licensed by Contractor and contained in or necessary for the use of the Deliverables or System. Contractor Intellectual Property includes software (including rights in Commercial Off the Shelf—COTS) owned or licensed by Contractor, Documentation, and any derivative works of either.

"DAS" means the Department of Administrative Services.

"Data Warehouse" means a database for reporting and analysis.

"Deliverables" means all Services and items including Work Product designated as Deliverables in the Statement or Work that Contractor is required to deliver to Agency under this Contract.

"Delivery Schedule" means that attribute of the Statement of Work setting forth the completion date of each Milestone and the delivery date for each Deliverable.

"Documentation" means all documents, including documents that are Deliverables described in the Statement of Work and includes any and all operator's and user's manuals, training materials, test materials, guides, commentary, listings, requirements traceability matrices, test items developed for ODE, and other materials, that are to be delivered by Contractor under this Contract.

"DOJ" means the Oregon Department of Justice.

"Effective Date" means the date on which this Contract is fully executed and approved according to applicable laws, rules and regulations.

"Field Test" means a test administration used to check the adequacy of testing procedures, generally including test administration, test responding, test scoring, and test reporting. A field test is more extensive than a pilot test.

"Final Acceptance" is defined in Section 2.5 of this Contract.

"Implementation Period" means the period from the Effective Date of the Contract through the first full year after ODE's Final Acceptance of the System.

"IMS Question and Test Interoperability (QTI)" means the international developments aimed at making it easier to transfer assessment data such as questions and results between software packages. IMS QTI specifies a way of exchanging assessment information such as questions, tests and results.

"Intellectual Property Rights" is defined in Section 10.2 of this Contract.

"Interim Assessment" means assessments that provide educators with actionable information about student progress at locally determined intervals throughout the year. Like the summative assessment, the interim assessments will be computer adaptive and will include performance tasks.

"Interoperable" or "Interoperability" means the ability of information systems to work together within and across organizational boundaries in order to advance the effective delivery of the Services.

"Item Bank" means the System application that manages the workflow functionality to track the creation, development, review and approval processes of assessment items, graphics, tasks, and stimuli; manages the storage and retrieval of assessment items; tracks item versioning and lineage; and provides a robust search and query capability to allow searching on all types of metadata.

"Key Persons" means Contractor's Authorized Representative, the Project Manager and all other Contractor personnel designated in Exhibit E of this Contract.

"Maximum Not-To-Exceed (NTE) Compensation" is defined in Section 5.1 of this Contract.

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

"OAKS" means the Oregon Assessment of Knowledge and Skills, and is ODE's testing program for Science and Social Sciences. See OAR 581-022-0610 et seq.

"Operating Environment" means the hardware, programming languages, software (including operating system software), system architecture, and firmware necessary for the System to operate in accordance with its specifications.

"Performance Task" means a goal-directed assessment exercise that consists of an activity that is completed by the student.

"Pilot Test" means a test administered to a sample of test takers to try out some aspects of the test or test items, such as instructions, time limits, item response format, or item response options.

"Portal" means the entry point where end-users access the components of the System. The portal handles what System components a user has access to. It allows the display of information and dashboard widgets from multiple different components.

"Project Manager" unless otherwise specified, 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 E of this Contract.

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

"Requirement" means a formal definition of a technical or operational requirement, and may be internal or external. A Requirement defines a standard against which performance of the System is measured.

"RFP" means Request for Proposal ODE-1249-12.

"Schedule of Deliverables" means that attribute of the Statement of Work that describes each Task, and Deliverable, measurable attributes of each Deliverable and Milestone with identification of the Services activities that are associated with them, and a completion date for each Milestone and Deliverable.

"Service(s)" means all effort to be expended by Contractor as set forth in the Statement of Work and the Subscription Agreement, including but not limited to the Subscription Services, and other services such consulting, implementation, configuration and customization to be provided to Agency by Contractor under this Contract.

"Selective Element" means a feature, function, or Service that Contractor is required to make available under this Contract, but over which ODE retains sole discretion as to ordering.

"Services Retention Amount" is defined in Section 5.3 of this Contract.

"Smarter Balanced" means the assessments, standards, guidelines, and principles published by the Smarter Balanced Consortium.

"Smarter Balanced Consortium" means the state-led consortium developing and promulgating assessments that are aligned with the Common Core State Standards, and related standards, guidelines, and principles. See http://www.smarterbalanced.org/.

"Software" is an all-inclusive term that refers to any computer programs, routines, and subroutines that are supplied by Contractor, including Software as a Service, operating software, programming aids, application programs, and software products.

"Software as a Service," "SaaS Software Application" and "SaaS Software" mean the computer software listed in Exhibit G, deployed as a hosted solution accessed over the Internet, to which Contractor has granted Agency access and use as part of a subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

"Statement of Work" means the document that describes the Services to be provided by Contractor including the Tasks, Deliverables and Milestones, the measurable attributes of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the Payment Schedule for each Deliverable and Milestone, and any other items as agreed by the parties including Amendments.

"Subscription Agreement" is the agreement governing the use of the applications and services set forth in Exhibit G, attached to this Contract.

"Subscription Services" means Agency's access to and use of and Contractor's provision of the SaaS Software Applications.

"System" means the array of software-based Services and outcomes provided by Contractor as the "Web-Based Computer-Adaptive Testing System." The System is the sum of the Services, Work Products Contractor Intellectual Property, Software, COTS Software, Hardware, and Documentation described in the Statement of Work that comprise the information system that Contractor will deliver, configure, implement, and operate and maintain under this Contract.

"Task" means a segment of the Services to be provided by Contractor under this Contract.

"Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor and contained in or necessary for the use, or optimal use, of the Deliverables. Third Party Intellectual Property includes rights in COTS Software owned by Third Parties.

"Work Product" 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 registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or agents (either alone or with others) pursuant to this Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Agency Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

2. SCOPE OF SERVICES

2.1 Performance

2.1.1 Responsibilities of Contractor.
Contractor shall perform the Services in accordance with the Statement of Work and the Subscription Agreement.

2.1.2 Requirements.
If the apparent silence or lack of granularity of the Requirements as to any detail, or the apparent omission of a detailed description concerning any Requirement results in ambiguity as to material characteristics of the System, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, Contractor shall seek a clarification from ODE. Failure to make such a request is at Contractor's risk. If any omitted Requirement results in decreased functionality or ambiguity as to material characteristics of the System, Contractor shall seek a formal Change Order. Failure to make such a request is at Contractor's risk. Contractor shall provide a System that meets ODE's needs, and complies with all applicable state and federal requirements and standards, with regard to any omitted Requirement for which clarification or change should reasonably have been sought.

2.2 Responsibilities of Agency.
If this Contract requires Agency to provide any resources, and Agency fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner but for a period not to exceed 30 calendar days, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by Agency's failure. If Agency's failure to provide such resources exceeds 30 calendar days and Contractor can show to the reasonable satisfaction of Agency that the Agency's failure has resulted in an unavoidable increase in the cost of the Services required for the Statement of Work, then Contractor shall be entitled to recover from Agency the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates may be exercised only if Contractor provides Agency with reasonable notice of Agency's failure and Contractor uses commercially reasonable efforts to perform notwithstanding Agency's failure to perform.

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. 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. Contractor shall provide at least one draft version of each Deliverable to the Agency-designated Program Manager prior to formal submission.

2.3.2 Contractor shall provide written notice to Agency upon delivery of a completed Deliverable (including any annual re-delivery) to Agency. By no later than (i) 20 calendar days after receipt of such notice or (ii) the date set forth in the Project Implementation Plan for Agency's review, whichever occurs later, Agency shall determine whether the Deliverable meets Acceptance Criteria. Acceptance Criteria includes all requirements for a Deliverable described in the Statement of Work, and the Performance Warranties in Section 8.2. If Agency determines that the Deliverable meets, in all material respects, the Acceptance Criteria, Agency shall notify Contractor of Agency's Acceptance. Agency's Acceptance of any Deliverable will not be construed as a waiver of Agency's rights under this Contract for any defect that was not discovered, or reasonably could have been discovered, by Agency in reviewing such Deliverable.

2.3.3 If the Agency determines that a Deliverable does not meet its Acceptance Criteria, in all material respects, 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 calendar day period, modify or improve the Deliverable at Contractor's sole expense so that the Deliverable meets the Acceptance Criteria, in all material respects, 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 calendar days of receipt of Contractor's delivery of the Deliverable. Failure of the Deliverable to meet the Acceptance Criteria, in all material respects, after the second submittal shall constitute a default by Contractor. In the event of 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, if Agency is unable to use any portion of such Deliverable. To the extent Agency can make partial use of the non-conforming Deliverable, then Contractor should be obligated to refund only a prorated portion of the amounts actually paid by Agency for such Deliverable. Any 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. User Acceptance Testing.

Contractor shall provide written notice to Agency upon complete customization and configuration of the System, as set forth in Exhibit A. Agency will test the entire System ("User Acceptance Testing") via the Acceptance Testing activities set forth in Exhibit A, including the accepted relevant Documentation and Deliverables, in order to determine if it meets, in all material respects, the Acceptance Criteria. If the System fails to conform to or perform according to the Acceptance Criteria, 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 10 business days from the date of receipt of Agency' notice or such later date as Agency shall specify in its notice, and shall resubmit the corrected System to Agency for retesting according to this Section 2.4.1, all at no additional charge to Agency.

2.4.2. Acceptance Period.

Upon completion of User Acceptance Testing, Agency shall use the System for the transformation and processing of System data in a live production environment for a period of 90 calendar days. At the end of such 90 day period, there shall be no known unresolved System Errors, as communicated in writing from Agency to Contractor. For the purpose of this Section 2.4.2, "unresolved System Errors" are errors that prevent the System from meeting the Acceptance Criteria of this Contract. If the System materially fails to conform to or perform in the Acceptance Criteria, 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 notice or such later 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 the following events have occurred or conditions exist:

2.5.1. Agency has notified Contractor the System meets all Acceptance Criteria and all 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 as specified in the Statement of Work;

2.5.4. All Documentation, Software, configuration data, and System configuration information are complete and are stored and controlled under a configuration management system as specified in the Statement of Work; and

2.5.5. Contractor has delivered all source code and Documentation, if applicable, in accordance with the terms of this Contract, including the Statement of Work.

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3. CONTRACTOR'S PERSONNEL

3.1 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 objectives for 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 as set forth in the Statement of Work.

3.2 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 Section 8 of this Contract.

3.3 Key Persons.

Contractor acknowledges and agrees Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's Key Persons identified in Exhibit E. 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 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 or delay. 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 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 Contractor, 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. Any replacement personnel approved by Agency shall thereafter be deemed a Key Person for purposes of this Contract and Exhibit E shall be deemed amended to include such Key Person.

4. TERM

This Contract shall be effective on the Effective Date, and shall terminate on June 30, 2023, unless this contract is extended or terminated earlier in accordance with its terms. Contract termination does not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

5. COMPENSATION

5.1 Maximum Payment Amount.

Notwithstanding any other provision of this Contract to the contrary, the maximum, not-to-exceed (NTE) compensation that Agency will pay to Contractor is $24,904,000.00, which includes payment for any allowable expenses for which Contractor may request reimbursement under this Contract.

5.2 Payments.

Agency shall pay Contractor for Services delivered and Accepted in accordance with Exhibit L, Payment Schedule.

5.2.1. For Services paid on an annual, flat-fee basis, the annual fee established for such Services will be paid in equal monthly installments, after Final Acceptance and Go Live. An annual fee will be prorated for any partial year in which

Services are provided, unless specified otherwise. Services indicated under "reimbursement unit" in Exhibit L, Payment Schedule, as a "Fee" are paid under this provision.

5.2.2. For Services paid on a maximum NTE amount basis, the maximum not-to-exceed amount will be payable on a monthly basis. Monthly invoicing may vary based on actual units of service provided, but total invoicing will not exceed the agreed-upon maximum for the Deliverable or period of service (e.g., year). Services indicated under "reimbursement unit" in Exhibit L, Payment Schedule, as a "Deliverable" or "License" are paid under this provision.

5.2.3. For Services paid on a unit rate basis (such as hourly), the instrument authorizing the services will specify the unit rate(s), maximum amount payable, and the payment schedule.

5.3 Reserved

5.4 Expenses.

Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement of Work. Any such authorized expenses for travel must comply with the Oregon Travel Policy.

5.5 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 Deliverables accepted by Agency. Such invoices must comply with the requirements of Sections 5.2, 5.3, and 5.4 and identify the Deliverables completed and Accepted by Agency for which Contractor seeks compensation, and itemize and explain all authorized expenses for which reimbursement is claimed. The invoices also must 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 5.5 and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462.

5.6 Limit on Payments.

Contractor shall not submit invoices for, and Agency will 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 17.16, 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.

6. OWNERSHIP RIGHTS AND LICENSE IN DELIVERABLES

6.1 Contractor Intellectual Property.

Contractor retains ownership of all Contractor Intellectual Property delivered to Agency pursuant to the Services performed under this Contract. Contractor grants Agency a non-exclusive, irrevocable, royalty-free, license to use, copy, display, distribute, transmit and prepare derivative works of Contractor Intellectual Property that is not the SaaS Software described in Exhibit G, and to authorize others to do the same on Agency's behalf. Notwithstanding the foregoing, to the extent any Contractor Intellectual Property that is not Software described in Exhibit G is incorporated in and essential to the intended use of any Work Product, such Contractor Intellectual Property shall be subject to the same license terms as the Work Product in which it is incorporated as provided in Section 6.2 below. Without limiting the generality of the foregoing, Contractor licenses and shall support the SaaS Software , in accordance with the terms and conditions set forth in the Subscription Agreement in (Exhibit G).

6.2 Work Product.

6.2.1 Generally. Except as specified below in Section 6.2.2 and 6.4, Contractor owns all Work Product. Contractor grants Agency a perpetual non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Work Product that are not Software described in Exhibit G, and to authorize

others to do the same on Agency's behalf. Without limiting the generality of the foregoing, Contractor grants Agency a license for the SaaS Software described in and in accordance with the terms and conditions set forth in the Subscription Agreement (Exhibit G).

6.2.2 Documentation.

6.2.2.1 If Documentation that is a Work Product has been developed and delivered by Contractor as a Deliverable to Agency under this Contract, and such Documentation has been funded by Agency, to any extent, with either state or federal funds, then Agency shall have all right, title, and interest (including ownership of copyright and trademark) to such Documentation, and Agency grants to Contractor an irrevocable, perpetual, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, distribute copies and prepare derivative works of such Documentation.

6.2.2.2 Notwithstanding any other term in this Contract, any Documentation that is a Work Product is subject to the limitation that Contractor may not charge a development, licensing or user fee to any state, federal, or local governmental entity when distributing copies of, and transferring/sublicensing rights to, the Documentation to such entity. Contractor's exercise of its right to transfer/sublicense according to this Section 6.2.2.2 shall be considered an activity performed by Contractor under this Contract.

6.3 Third Party Intellectual Property.
Unless it is specified in Exhibit A, Agency, on its own, will acquire and/or obtain a license to Third Party Intellectual Property. Contractor shall secure on Agency's behalf, in the name of Agency and subject to Agency's approval, a license to Third Party Intellectual Property specified in Exhibit A sufficient to fulfill the business objectives, requirements and specifications identified in this Contract.

6.4 Agency Intellectual Property; Data and Background Information.
Agency owns all Agency Intellectual Property and Agency data and background information provided to or gathered by Contractor pursuant to this Contract, including all student data such as test scores and test meta-data. Agency grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Agency Intellectual Property and Agency data and background information only to the extent necessary to fulfill the purposes of this Contract. Agency's license to Contractor is limited by the term of this Contract and the confidentiality obligations of this Contract.

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

6.6 Competing Services.
Subject to the provisions of this Section 6, and Contractor's obligations with respect to Confidential Information, as defined in Section 7, nothing in this Contract shall preclude or limit in any way the right of Contractor to: (i) provide 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.

6.7 Except as otherwise provided herein, neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent of the granting party. Each party grants only the licenses and rights specified in this Contract.

6.8 Open Source Elements.

Any Open Source materials in the System must be approved in advance and in writing by ODE. If Contractor desires to include Open Source materials, Contractor shall:

6.8.1 Notify ODE in writing that the System contains Open Source materials,

6.8.2 Identify the specific portion of the System that contain Open Source materials, and

6.8.3 Provide a copy of the applicable license for each Open Source item to ODE

6.9 Source Code Escrow.

Unless otherwise agreed in writing with Agency, within thirty (30) days following Final Acceptance, Contractor shall propose to Agency a mutually agreeable, commercially reasonable three -party escrow as follows:

6.9.1 Deposit Requirement

6.9.1.1. The source code for the System, as are required for the System to function, in such format that will allow Agency to build and compile useful object code;

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

6.9.1.3. Any Agency data stored or otherwise managed by Contractor;

6.9.1.4. 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").

6.9.2. Release Events:

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 will 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:

6.9.2.1Source 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 6.9.2.2. Contractor's cessation, for any reason, to do business; or

6.9.2.3 Contractor discontinues offering maintenance services for the Deposited Programs; or

6.9.2.4. 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' rights or interests under this Contract within thirty (30) days; or

6.9.2.5. 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.

6.9.3. Fees.

Contractor shall pay the fees of the escrow agent. The copies of the Deposited Programs placed in escrow must 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 Contractor, during the term of the escrow agreement, the revised Deposited Program, including the change, shall be delivered to the escrow agent not later than sixty (60) calendar days after the change is effected by or on behalf of Contractor. Contractor shall allow Agency to periodically examine the escrowed source code for the Deposited Programs to verify it is current and complete.

6.9.4. Agency Rights.

Upon receipt of the Deposited Programs by Agency pursuant to the escrow agreement entered into under this Section 6.9, 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 royalty-free, non-exclusive license to use, reproduce, prepare derivative works based on, perform and display the Deposited Programs for the purpose of providing the Services that Contractor is no longer able or willing to provide under this Contract for a period of up to the equivalent of the Disengagement Period (as such term is defined in Section 13.4 below), or as otherwise agreed upon in writing by the parties. Upon Agency's cessation of use of the Deposited Program to provide the Services or the expiration of said period, whichever occurs sooner, Agency shall immediately return or destroy all copies of the Deposited Program, including any modifications or derivative works thereof, as well as all other materials released to Agency from the escrow account, to Contractor and provide a written certification signed by a duly authorized official of Agency attesting to such fact.

7. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY

7.1 Confidential Information Generally.

Contractor acknowledges that it and its employees or agents may, in the course of performing the Services 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 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 and reflect the use of the Confidential Information by Contractor shall be treated 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 or is contained in a publicly available document; (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 non-disclosure 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, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

7.2 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 (other than its subcontractors) 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 its commercially reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation 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.

7.3 Identity Theft.

In the performance of this Contract, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11), including Social Security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have in place, a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

7.3.1 In addition to, and without limiting the generality of, Sections 7.1 and 7.2, Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Contract. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, DAS, required by applicable law, or required by an order of a tribunal having competent jurisdiction

7.3.2 Contractor shall promptly report to Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Contract.

7.3.3 Contractor shall require the compliance of its employees and agents (including subcontractors) with this Section 7.

7.4 FERPA.

State and federal laws referenced in Exhibit A, Statement of Work, including the Family Educational Rights and Privacy Act (FERPA), 20 USC §1232g, as it applies to education records of individual students held by Agency. If Contractor has access to personally identifiable education records, it shall not disclose them to anyone and upon completion of the Services it shall at the option of Agency return or destroy the records. Contractor shall comply with all applicable statutes and rules related to FERPA and education records.

7.5 Security Policies/Non-Disclosure Agreement; Information Privacy/Security/Access.

Contractor at all times shall comply with Agency's security policies, including:

7.5.1 Agency and policies for IT services and security, and as those laws, regulations, and policies are updated. See Agency information at: http://www.ode.state.or.us/search/page/?id=3554

7.5.2 Information Privacy/Security/Access.

If the Services performed under this contract requires Contractor or, when allowed, its subcontractor(s), to have access to or use of any Agency computer system or Confidential Information for which Agency imposes security requirements, and Agency grants Contractor or its subcontractor(s) access to such Confidential Information or network and information systems, Contractor shall comply and require all subcontractor(s) to which such access has been granted to comply with Agency policies and upon Agency's request provide a written non-disclosure agreement and obtain such from Contractor's employees and subcontractors (if any) performing Services under this Contract.

7.6 Injunctive Relief.

Contractor acknowledges that breach of this Section 7, including disclosure of any Confidential Information, will cause 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

7.7 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.

8. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

8.1 Contractor's General Representations and Warranties. Contractor represents and warrants to Agency that:

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

8.1.2 This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms;

8.1.3 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;

8.1.4 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 that is applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order.

8.1.5 Contractor's performance under this Contract to the best of Contractor's knowledge 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 Contract.

8.1.6 The Contractor Data and Tax Certification in the form attached hereto as Exhibit C and the Certification Statement For Independent Contractor in the form attached hereto as Exhibit D, 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 C or D, if applicable, are no longer true and accurate.

8.2 Contractor's Performance Warranties.
Contractor represents and warrants to Agency that:
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 that Contractor, Contractor's employees, and any authorized subcontractors perform the Services described in this Contract in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Agency pursuant to this Contract, and (2) following the date of completion of the Services, the Work Product, and the Deliverables will conform to the Statement of Work and the Acceptance Criteria. Contractor specifically warrants that as to any Deliverable hereunder such Deliverable shall: (a) be free from material errors caused by Contractor's failure to fulfill its obligations under this Contract, and (b) materially conform to all requirements and specifications contained in the Statement of Work and the Acceptance Criteria.

8.2.1 So long as Agency has paid fees for delivery of the System, the System shall materially conform to the Acceptance Criteria 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 defects in materials, workmanship and design.

8.2.2 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.

8.2.3 Contractor represents and warrants that it will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective

information security program that at minimum complies with the requirements of the Oregon Identity Theft Protection Act (ORS 646A.600 to .628) to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control.

8.2.4 Contractor represents and warrants that at the time of implementation of the Subscription Services shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware, and other malicious code that will hamper performance of the software, unlawfully collected information on users, unlawfully collected personally identifiable information on users or clients, or prevent the System from performing as required under the terms and conditions of this Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends, or ends use of the System expressly permitted by the terms and conditions of the license(s) under which the System was provided.

8.2.5 Warranties Cumulative.
Contractor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Contract, including any in the Proposal. All warranties provided for in this Contract shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Agency.

8.3 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 PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

8.4 The warranties stated above will not apply to the extent that there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Agency or a third party, or failure or damage caused by a product for which Contractor is not responsible.

9. LIMITATION OF LIABILITY

9.1 EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10.1, (ii) SECTION 10.2, (iii) SECTION 7, OR (iv) 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, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

9.2 EXCEPT IN INSTANCES ARISING OUT OF OR RELATED TO (i) SECTION 10.1, (ii) SECTION 10.2, (iii) SECTION 7, OR (iv) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE OR RECKLESS OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY TO THE STATE, INCLUSIVE OF LIQUIDATED DAMAGES, SHALL NOT EXCEED 80% (eighty percent) OF THE MAXIMUM AMOUNT PAYABLE ("NOT TO EXCEED" OR "NTE") DURING THE CONTRACT YEAR(S) IN WHICH THE EVENT(S) GIVING RISE TO SUCH LIABILITY TAKES PLACE.

9.3 Liquidated Damages.

9.3.1 The liquidated damages set out in Exhibit J are capped for each Contract Year at a percentage of the NTE payable for the Contract Year in which the event giving rise to the assessment of liquidated damages occurs as follows: 16% (sixteen percent) of 80% (eighty percent) of the NTE payable for the first Contract Year, and 13%

(thirteen percent) of 80% (eighty percent) of the NTE payable each Contract Year thereafter. This damages cap applies only to the liquidated damages set forth in Exhibit J. If Agency elects to accept System enhancement Services equivalent to the value of the liquidated damages due to ODE, the value of the Services will count towards the relevant Contract Year's cap.

9.3.2   The assessment of liquidated damages will not constitute a waiver or release of any other remedy Agency may have under this Contract for events not specifically covered by Exhibit J at law, at equity, or otherwise, including but not limited to Agency's right to terminate this Contract.

9.4   To the extent Agency is required under this Contract to indemnify or hold Contractor harmless, including any adverse judgments or settlements to which Agency consents, Agency's obligation to indemnify is subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

10. INDEMNIFICATION

10.1 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, statutory penalties, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the 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 to the extent they are attributable to the acts or omissions of Agency or the State of Oregon, or their officers, employees or agents.

10.2 IP Indemnity.
In addition to and without limiting the generality of Section 10.1, 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 Agency's use thereof infringe or violate 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 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 Deliverables continue to meet the requirements, specifications and Acceptance Criteria of 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.

10.2.1 Contractor shall not be liable under this Section 10.2 for any claim for infringement to the extent it is based on the following:

10.2.1.1 Agency's modification of the Deliverables or the System other than as contemplated by this Contract, a Deliverable, or the System specifications; or as otherwise authorized by Contractor in writing.

10.2.1.2 Use of the Deliverables or the System in a manner other than as contemplated in this Contract, a Deliverable, or the System specifications; or as otherwise authorized by Contractor in writing.

10.2.1.3 Use of the Deliverables or the System in combination, operation, or use with other products other than as

contemplated by this Contract, by a Deliverable, or the System specifications; or as otherwise authorized by Contractor in writing.

10.3 Control of Defense and Settlement.

Contractor's obligation to indemnify Agency as set forth in Sections 10.1 and 10.2 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 10.1 or Section 10.2; 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.

10.3.1 Contractor's duty to defend ends if the State of Oregon declines to consent to a settlement that does not violate Oregon law and that Contractor recommends and the claimant will accept. If the State of Oregon declines to consent to such a settlement, and the State of Oregon was allowed a reasonable amount of time to consider the settlement, Contractor's liability shall not exceed the amount for which Contractor could have settled such claim had the State of Oregon consented, plus claim expenses incurred prior to the date on which the State of Oregon declined to consent.

10.3.2 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.

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

10.5 Insurance. Contractor shall provide insurance as required by Exhibit B.

11. EVENTS OF DEFAULT

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

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

11.1.2 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 30 calendar days after delivery of Agency's notice or such longer period as Agency may specify in such notice; or

11.1.3 Contractor commits any material breach 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 30 calendar days after delivery of Agency's notice or such longer period as Agency may specify in such notice.

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

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

11.2.2 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 30 calendar days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

12. REMEDIES FOR DEFAULT

12.1 Agency's Remedies.
In the event Contractor is in default under Section 11.1, 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:

12.1.1 Termination of this Contract under Section 13.1.4;

12.1.2 Withholding all compensation due for Services that Contractor is obligated but has failed to perform or failed to perform in accordance with this Contract;

12.1.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

12.1.4 Exercise of its right of setoff; and

12.1.5 Assessment of liquidated damages and withholding such sums from monies due for Contractor Services.

12.2 Remedies Cumulative.
These Agency 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; provided, however, the liquidated damages for events specified in Exhibit J will be Agency's sole remedy for those events, unless the damages cap referenced in 9.3.1 is exceeded, in which case Agency will have rights under both Section 13.1.1 and 13.1.4. Notwithstanding the foregoing agreement as to liquidated damages, Agency retains all rights under Section 13.1.1, 13.1.2, and 13.1.3.
12.2.1 If it is determined for any reason Contractor was not in default under Section 11.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 13.1.1, 13.1.2, or 13.1.3.

12.3 Contractor's Remedies.
In the event Agency terminates this Contract as set forth in Section 13.1, or in the event Agency is in default under Section 11.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 13.2, Contractor's sole monetary remedy shall be a claim for: (i) any unpaid invoices for Deliverables completed, delivered and accepted; and, (ii) for all other incomplete Deliverables, an amount calculated by determining the percentage of Services completed for each unpaid Deliverable and applying that percentage to the fixed price for the Deliverable and any authorized expenses incurred. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 12.3, Contractor shall pay any excess to Agency upon written demand.

12.4 Attorney's Fees.
Except as otherwise specified, neither party shall be entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

13. TERMINATION / DISENGAGEMENT

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

13.1.1 Agency may terminate this Contract for its convenience upon 30 calendar days' prior written notice to Contractor.

13.1.2 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;

13.1.3 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;

13.1.4 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 11.1.

13.2 Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon Agency's default under Section 11.2.

13.3 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 8.2, unless Agency has accepted the Deliverable pursuant to Section 2.3.

13.4 Disengagement. Upon expiration or termination of this Contract and notwithstanding the reason for termination, whether for cause or without cause and whether by Agency or Contractor, at the option of Agency, Contractor shall continue to offer Services at the same service levels, and shall provide disengagement services as described in the Disengagement Plan (as such term is defined below) for a period of approximately 180 days after termination (the "Disengagement Period"), or a period otherwise agreed upon in writing by the parties, in order to allow Agency the opportunity to prepare for and execute a responsible and secure transition to another service provider, on the following conditions:

13.4.1. Agency promptly pays all fees due and owing and not disputed at the commencement of the Disengagement Period through a written notice of dispute sent to Contractor by Agency, and

13.4.2. Agency promptly pays all invoices during the Disengagement Period, and Contractor continues to receive any transaction fees from agreed work orders.

13.4.3. In any event, if during the Disengagement Period Contractor believes Agency is not in compliance with the foregoing transition conditions, Contractor shall give Agency notice of such noncompliance and Agency shall have 15 days, or such longer period to which the Parties may agree, to correct the noncompliance before Contractor may end the Disengagement Period and move to the Wind-Down Phase in Section 13.5 below. Contractor and Agency will work together to develop a "Disengagement Plan" setting forth the respective tasks to be accomplished by each party in connection with the Disengagement Plan and a schedule pursuant to which such tasks are to be completed and identifying which Party is responsible for paying the cost (if any) related to each Task. The parties will cooperate in good faith with each other in connection with their obligations under this Section 13.4 and will perform their obligations under such agreed Disengagement Plan. If the Disengagement extends beyond the Term, the provisions of this Contract will remain in effect for the duration of the Disengagement and will apply to all Services provided by Contractor during the Disengagement Period.

13.5 Wind-Down.
Upon the later of (a) the expiration or termination of this Contract or (b), if applicable, termination of the Disengagement Period, Contractor will cease to perform the Services, and Agency will pay to Contractor all amounts due to Contractor

for all Services provided and expenses incurred through the end of the Term; provided, however, when such termination is due to the breach or bankruptcy of Contractor, Agency shall not be required to pay any amounts claimed by Contractor to be due and owing until Agency determines what, if any, setoffs are required and the remedies owed to Agency are either agreed upon by Contractor through a settlement or ordered by a court of competent authority, provided further, however, that Contractor shall be entitled to continue to receive any transaction fees for Services provided pursuant to any agreed-upon work order.

14. INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING

14.1 Independent Contractor.
Contractor shall perform all Services as an independent contractor. Although Agency reserves the right to determine and modify the delivery schedule for Services and 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.

14.2 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.

14.3 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.

15. COMPLIANCE WITH APPLICABLE LAW.

15.1 Compliance with Law Generally.
Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this 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 this Contract and required by law to be so incorporated. Agency's performance under this 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.

15.2 Changes in Law Affecting Performance.
Each party hereby agrees to immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Contract. Each party shall be responsible for monitoring changes in Federal and State laws, ordinances and

regulations applicable to its performance hereunder, and such party shall be deemed to be aware of such changes within thirty (30) days of the enactment of any such change.

15.3 Oregon False Claims Act.
Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor.

15.3.1 Without limiting the generality of the foregoing, Contractor represents and warrants that:

15.3.1.1 Its representations, certifications, and other undertakings in this Contract are not False Claims Act Violations (as such term is defined below); and

15.3.1.2 No Services or Deliverables under this Contract, including but not limited to any invoices, reports, or other deliveries in connection with the System, will constitute False Claims Act Violations.

15.3.2 For purposes of this Section 15.4, a "False Claims Act Violation" means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.

15.3.3 Contractor shall immediately report in writing, to ODE, any credible evidence a principal, employee, agent, subcontractor, or other person supplied by Contractor has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Contract or moneys paid by ODE under this Contract.

15.3.4 Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or ODE under this Contract or any other provision of law.

15.3.5 Contractor acknowledges and agrees any disclosures of its proprietary information, not otherwise protected by applicable law that Contractor makes under this Contract are subject to the Oregon Public Records Laws, including but not limited to ORS 192.410-192.505, and the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170. Agency will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Contract and applicable state and federal law.

15.3.5.1 Contractor proprietary information is any information marked or designated in writing by Contractor as "confidential" prior to initial disclosure, or information disclosed orally that is confirmed in writing as "confidential" within 10 (ten) calendar days of disclosure.

15.3.5.2 Agency may disclose proprietary information to its third party Quality Assurance contractor, provided Agency requires its Quality Assurance contractor to sign a confidentiality agreement.

15.3.5.3 Agency may disclose and provide copies of proprietary information to the extent disclosure is required by the Oregon Public Records Law (ORS 192.410 to 192.505). If Agency receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor proprietary information, Agency will notify Contractor within a reasonable period of time of the request. Contractor is exclusively responsible for defending Contractor's position concerning the confidentiality of the requested information. Notwithstanding the foregoing, while Agency is not required to actively assist Contractor in opposing disclosure of proprietary information, Agency is required to cooperate in good faith to the extent reasonably practicable in Contractor's efforts to protect its proprietary information.

15.3.5.4 The confidentiality obligations imposed by this Section 15.3.5 do not apply to: (a) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (b) information subsequently and rightfully received from third parties who

have the necessary rights to transfer the information without any obligation of confidentiality; (c) information known to the recipient prior to the effective date of this Contract without obligation of confidentiality; (d) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (e) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Agency is required to disclose Contractor proprietary information under clause (e), Agency will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.

16. DISPUTE RESOLUTION

16.1 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 16.1.

16.2 Governing Law.
This Contract shall be governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

17. MISCELLANEOUS PROVISIONS

17.1 Order of Precedence. This Contract consists of the following documents listed in descending order of precedence:
  a) The terms and conditions of the main body of this Contract (i.e. excluding its Exhibits);
  b) Exhibit H, Federal Terms and Conditions;
  c) Exhibit A, Statement of Work;
  d) Exhibit G, Subscription Agreement;
  e) Exhibit J, Service Level Agreement;
  f) Exhibit M, Request for Proposal
  g) Exhibit N, Contractor's Proposal
  h) Exhibit K (Reserved);
  i) Exhibit I (Reserved);
  j) Exhibit L, Payment Schedule;
  k) Exhibit E, Contractor Personnel; and
  l) Exhibits B, C, D, and F.

The aforementioned Exhibits are by this reference incorporated in this Contract. To the extent provisions contained in more than one of the foregoing documents apply in any given situation, the parties agree (i) to read such provisions together whenever possible to avoid conflict, (ii) to refer to the RFP and the Proposal to help clarify the intent of the parties, and (iii) to apply the foregoing order of precedence only in the event of an irreconcilable conflict.

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

17.3 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 or assignment shall be timely and not unreasonably withheld. Agency consent to a subcontract or assignment does not relieve Contractor of any of its duties or obligations under this Contract. The assignment of this Contract, in whole or in part to a successor organization by merger or acquisition does not require the consent of the other. Contractor is also permitted to assign its rights to payments without obtaining Agency's consent.

17.4 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.

17.5 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.

17.6 Funds Available and Authorized.

Contractor shall not be compensated for Services performed under this Contract by any other agency, department, or unit 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 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.

17.7 Closeout in Event of Non-Appropriation of Funds.

Nothing in this Contract may be construed as permitting any violation of Article XI, Section 7, of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. In the event of a failure or termination of ODE's funding or expenditure authority prior to Contractor's receipt of the final payment under this Contract, Contractor is entitled to retain any payment already received from ODE under this Contract. In addition, but only to the extent ODE has any funds appropriated and lawfully available for the purpose of making in such an event, and to the extent payments already received by Contractor are insufficient to reimburse Contractor for Services already performed and Deliverables already delivered, Contractor will, upon submitting to ODE appropriate proof Contractor incurred such expenses, be compensated for its reasonable costs and expenses that arise out of the non-appropriation event, where such reasonable compensation may be measured as a percentage of any unpaid payment assigned to a Deliverable, equal to the percentage of work Contractor had completed on that Deliverable, and Services provided up to the time Contractor becomes aware of the non-appropriation event. In consideration of ODE's compliance with this Section, Contractor shall grant to ODE, subject to the requirements of Section 6 of this Contract, all rights of ownership in, including possession of, all Deliverables paid for by ODE to that point in time as provided herein.

17.8 Records Maintenance; Access.

Contractor shall maintain all fiscal 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 fiscal records, books, documents, papers, plans, and writings for a minimum of 6 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.

17.9 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 as 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.

17.10 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 Sections 5, 6, 7, 8, 9, 10, 12, 13, 14 and 16, and Sections 14.3, 17.1, 17.4, 17.5, 17.8, 17.10, 17.13, 17.14, 17.20, 17.21, and 17.22.

17.11 Time Is of the Essence.

Contractor agrees time is of the essence under this Contract for critical path Deliverables or Milestones as set forth in the Statement of Work.

17.12 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. Both parties 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.

17.13 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, emailing of, or mailing the same (postage prepaid) to Contractor at the address or number set forth on Exhibit E, and to Agency at the address or number set forth on Exhibit F, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 17.13. Any communication or notice so addressed and mailed shall be deemed to be given 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 or email transmission must be confirmed by telephone or return email 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.

17.14 Severability.

The parties agree 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.

17.15 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.

17.16 Amendments

17.16.1 Generally.

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

17.16.2 Anticipated Amendments.

The parties have determined during the term of this Contract, the parties may need to modify selected terms, conditions, price(s) and types of Services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

17.16.2.1 Amendments required as a result of necessary changes in the State's business process that may restructure a State Agency;

17.16.2.2 Amendments to the Statement of Work to add Services within the scope of the RFP and this Contract;

17.16.2.3 Amendments to delete Services from the Statement of Work of this Contract;

17.16.2.4 Amendments to extend the term of this Contract;

17.16.2.5 Amendments to change pricing; and

17.16.2.6 Amendments to implement advances in technology and Agency's future requirements, including those associated with potential future funding sources.

17.17 Stop Work Order.

Agency may, at any time, by written notice to the Contractor, require the Contractor to stop all, or any part of the Services required by this Contract for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop Work Order terms. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Agency shall either:

17.17.1 Cancel or modify the Stop Work Order by a supplementary written notice; or

17.17.2 Terminate Contractor's Services as permitted by either the Default or the Convenience provisions of Section 11 through 13, Events of Default; Remedies for Default; Termination.

If the Stop Work Order is canceled, Agency may, after receiving and evaluating a request by the Contractor, make an adjustment in the time required to complete this Contract and this Contract price via a duly executed amendment. The provisions of Section 2.2 do not apply to this Section 17.17.

17.18 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.

17.19 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.

17.20 Headings.

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

17.21 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.

17.22 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.

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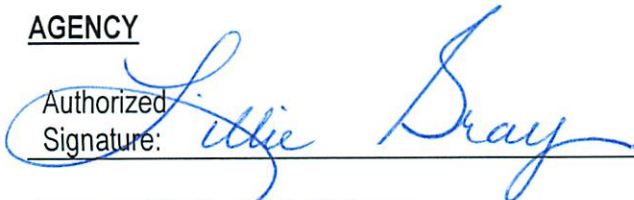
CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Contractor

Authorized Signature:	*[signature]*	Title: Director, Contracts & Grant	Date: 04/04/2014
Print Signature	Thomas Jesulaitis	E-Mail tjesulaitis@air.org	
		Address:1000 Thomas Jefferson Street, NW Washington, DC 20007-3835	

AGENCY

| Authorized Signature: | *[signature]* | Title: Director – Procurement Services | Date: April 4, 2014 |

Approved for Legal Sufficiency

| Authorized Signature: email approval – Ellen Price | Title: Assistant Attorney General | Date: April 4, 2014 |

(Matter GF0606-12)

EXHIBIT A
STATEMENT OF WORK

Part A
System Services and Deliverables

Contractor shall provide professional services and qualified personnel to deliver a hosted Web-Based Computer-Adaptive Testing System ("System") that meets the requirements of this Contract via the Services and Deliverables described in this Exhibit A. Contractor shall provide the software, associated implementation services, testing delivery services, and application hosting necessary to meet ODE's requirements for the System. System components are listed in Schedule A to Exhibit G.

In addition to the minimum Deliverables and Services specifically stated in this Statement of Work, Contractor shall provide all normal and customary services provided by a contractor providing student technology-enhanced testing services. Agency reserves the right to amend this Contract to expand the services provided by Contractor to include additional services, including supported technology to encompass new advances in the field of instruction and assessment.

A.1 Summary:

Contractor shall provide online testing services to conduct the required assessment tests for grades 5, 8, and high school (grades 9 – 12) in science and social sciences (OAKS), and for grades K-12 in English Language Proficiency (ELPA). The elements of Oregon's testing services program are described in Part B of this Exhibit A. The System and Services delivered by Contractor must meet all program, design, technical, functional, and schedule Requirements described in Part A and Part B of this Exhibit A, and meet at least the student testing and operational items volumes described in Part B of this Exhibit A.

1. The System must use Oregon's current method of online computer-adaptive testing (CAT) (i.e. item difficulty is selected by the test engine based on a student's prior response pattern, but the content is delivered within the restrictions of the test grade level.) Contractor must provide both testlet and single item adaptation.

2. Contractor shall implement all components of the System in accordance with the accepted Deliverable 1 (Project Implementation Plan), and support and enhance the System in accordance with accepted Deliverables. System support and enhancement will be governed by Deliverable 5 (Support Services Guide), Deliverable 6 (Training Materials), Deliverable 7 (Hosting and Security), Deliverable 9 (Business Continuity and Disaster Recovery), and applicable provisions of Exhibit J, Service Level Agreement.

3. Contractor shall provide all Services in accordance with accepted Deliverables. Services will be governed by Deliverable 5 (Support Services Guide), Deliverable 6 (Training Materials), Deliverable 7 (Hosting and Security), Deliverable 9 (Business Continuity and Disaster Recovery), and applicable provisions of Exhibit J, Service Level Agreement.

4. Key components of and Services for the Assessment System. An overview of the key expectations of Contractor is in the table below.

System/Service Component	Description	Requirements
Secure, Computer-	The Test Delivery component must include both a secure student	Sections

System/Service Component	Description	Requirements
Adaptive Test Delivery Component	interface and a test administrator interface and have the capability to store student responses and other information about how the student responded (i.e. time to answer, time to render for the student, etc.) The student interface is responsible for delivering the items to the student and gathering the responses and response metadata. The student interface must include a computer adaptive testing engine, accessibility features, and security features and must support testing in the following areas: • Oregon's English Language Proficiency Assessment (ELPA) • Oregon Assessment of Knowledge and Skills (OAKS) Science • OAKS Social Sciences • Smarter English Language Arts assessment • Smarter Mathematics assessment The test administrator interface must support test administrators in setting up and managing online test sessions for students. It allows the test administrator to start and stop, or suspend, and resume the test. It also allows the test administrator to review and edit student test settings to ensure compliance with accommodations identified in a student's Individual Education Plan (IEP) and to monitor student progress.	A.2 – A.6
Item Authoring, Development, and Management	The Assessment component must support the remote development of secure test items by Contractor, ODE staff, and authorized designees, including item writing, graphic development, and association of metadata, translation, Braille transcription, and review.	Section A.7
Data Collection and Management	The Assessment component must support protocols for secure collection, management, and transfer of student data to and from ODE, and comply with the Family Educational Rights and Privacy Act (FERPA).	Section A.9
Scoring	The System must support the conversion of students' test responses into meaningful scores that are comparable across testing occasions. Students respond to test items in a variety of ways (e.g., selected response, graphic response, and short and extended written and oral responses). Both machine- and human-scored items are to be included in Oregon's online testing system. Scoring must be highly accurate and provide for quick turnaround of test results. Different scoring models will be applied to the various subject-area assessments supported by the System.	Section A.10
Reporting	The System must provide both performance and participation reports at the state, district, school, classroom, and student level. The performance reports must provide users at the state, district, school, and classroom level with information on student performance. Reports must be available at both the group and individual student level. Reports must also support longitudinal student data.	Section A.11

System/Service Component	Description	Requirements
Training and Support	Contractor shall train ODE staff and Educational Service District (ESD) staff to enable them to provide ongoing onsite training and support to school districts on how to use the proposed System. This training is required to be accessible online, via webinar, or onsite, per the discretion of the ODE staff.	Section A.12
Project Management	Contractor shall deliver Services in accordance with Agency-accepted Deliverables that identify all key activities, milestones, deliverables, responsible individuals, subcontractors, and durations/key dates for implementation, operations, and maintenance of the System. Contractor shall designate a full-time Project Manager who will have overall, daily responsibility for the project. This person must be dedicated full-time to Agency and responsible for project management and coordination with Agency.	Section A.13

A.2 TEST DELIVERY:

System Requirements

1. The Test Delivery component of the System must utilize CAT, restricted within grade level. The OAKS System uses both a CAT design with testlets and item-by-item adaptations. The selection of items must fit the test design, including the balancing of content within the test (based on test specifications and blueprints found in Section 1.3.2 of Exhibit M).

2. All components of the test delivery component (summative, practice, and diagnostic) must meet the accessibility and accommodation requirements described in Section 1.3.3.1 of Exhibit M, and deliver at least the Services described in Section 1.3 and Sections 3.2 through 3.6 of Exhibit M.

A.3 SUMMATIVE ASSESSMENTS

System Requirements

1. The summative assessments delivered through the System must meet all terms of the Elementary and Secondary Education Act (ESEA). Terms are evidenced by successful peer review.

2. The summative assessment CAT must follow the ODE-developed test specification and blueprint, in order for students to be exposed to a range of different content standards (in Science and Social Sciences) and performance standards (in ELPA) during each testing opportunity.

3. The System must deliver the Smarter Math and English Language Arts (ELA) summative assessments on the same test delivery component as the OAKS Science, Social Sciences, and ELPA.

A.4. PRACTICE TESTS

System Requirements

1. The System must allow students to take up to an ODE-authorized number of practice CAT assessments in a particular subject area (Science, Social Sciences, and ELPA; Smarter Mathematics and ELA). The practice

tests delivered via the System must allow students to take the assessment multiple times, as well as allow students to be exposed to a variety of different items each time (not-fix-formed).

2. The practice test of the System will follow the ODE-developed test specification and blueprint, in order for students to be exposed to a variety of different content standards (OAKS Science and Social Sciences; Smarter Mathematics, ELA) and performance standards (ELPA) during their practice test experience.

3. The practice tests of the System will have the capacity and capability to allow the Smarter Math and English Language Arts (ELA) practice tests to be delivered on the same test delivery system as the OAKS Science, Social Sciences, and ELPA.

A.5 PILOT TESTING AND FIELD TESTING

System Requirements

1. The System must allow field testing and pilot testing of the Smarter test subjects through the same test delivery component as the OAKS Science, Social Sciences, and ELPA.

Services and Deliverables

1. Contractor shall deliver pilot and field testing that includes at least activities for establishing parameters for items to be used in CAT. These include both conventional and technologically enhanced items that may use selected or constructed responses.

   a. Contractor shall deliver pilot testing via the System. For CAT, the purpose of pilot testing is to provide preliminary scaling and to establish anchor item sets for field testing. Pilot testing occurs before the operational CAT delivery engine has been built and is conducted through linked fixed forms or with a preliminary CAT.

   b. Contractor shall provide confirmatory scaling information and calibration of most items via field testing. For performance assessments, pilot testing provides extensive tryouts for each task template and is a preliminary test of the range finding, AI scoring, and distributed scoring systems. Field testing must provide final development of the test delivery System and delivers a set of operationally ready tasks for both the practice and summative banks.

A.6. DIAGNOSTIC TOOLS

The System must provide diagnostic assessments to assist educators in making valid and reliable curriculum and instructional decisions. The System will have the Diagnostic Assessment options listed below available.

System Requirements

1. The System must allow teachers to have the option from a central administration screen to determine the length (i.e. number of items, either approximately 35 items or approximately 55 items) of a student's assessment.

2. The System must allow ODE to independently set the availability of diagnostic assessments for each item pool to ensure enough items are available.

3. The System must be configurable, such that the assessments will be able to meet the instructional needs of teachers and students

4. The System must allow the Smarter Balance formative tools (digital library) and interim assessments for both Math and English Language Arts (ELA) be delivered through the same test delivery system as OAKS Science, Social Sciences, and the ELPA.

   The digital library does not include student test items—it is a collection of professional development and lesson plans. Therefore, it is not delivered through a test delivery system. Smarter Balance plans to host the digital library for member states.The interim will be delivered through Contractor's test delivery system.

A.7 ITEM MANAGEMENT

System Requirements

A.7.1 Item Specifications –The System must support operational tests containing at least 40 to 50 items, in a variety of item types. The OAKS Science, Social Sciences, and ELPA operational tests will consist of selected-response items, hand-scored constructed response items, and machine-scored graphic response items, and the Smarter ELA and Mathematics assessments which include Performance Tasks, Simulations, Technology Enhanced items and Technology Enabled items.

1. **Selected-Response items** –The System must support selected response items that measure at least one single score reporting category (SRC) or strand and have up to five response options. The System must allow items to be presented individually or grouped together into modules or related questions linked to a single passage or stimulus (e.g., data table, diagram). OAKS Science and Social Sciences operational tests will consist primarily of selected response items, and the ELPA and the Smarter Mathematics and ELA assessments will also contain some selected response items. Most items to have 4 response options; however, some items may have either 3 or 5 response options. ODE's testing methodology for multiple choice items does not use "none of the above" or "all of the above" as response options.

2. **Constructed Response Items** - Hand-Scored Items -The ELPA includes four constructed response item types that are hand-scored: Elicited Imitation, Speaking Short Response, Speaking Extended Response, and Writing Extended Response. The System must support these item types. Descriptions of these item types and their rubrics can be found at **http://www.ode.state.or.us/search/page/?id=496,** or as otherwise provided by ODE.

3. **Machine-Scored Graphic Response Items** - The OAKS Science, Social Sciences, ELPA, and Smarter Mathematics and ELA assessments contain machine-scored graphic response items. Machine-scored graphic response items ask students to plot their answers on a grid and allow students to demonstrate their knowledge and skills in a more complex fashion than permitted by multiple choice items. These items are scored using a rubric and may be weighted to be worth multiple points. The System must support these item types.

4. **Developed Items** - The System must have the capacity to accept batch imports of items previously authored, developed, and field tested. This import of operational and field test items will include all attributes, keys, distracters, graphics, and stimuli in a format agreed upon between ODE and Contractor (e.g., XML, QTI). The items to be imported are currently in XML format. The System must have an automated interface to accept these items. The System must provide an interface format to accept future additions, changes, and deletions to the test item pools.

5. **Item Banks** –The System must include separate operational and practice item banks for each content area (OAKS Science, Social Sciences, ELPA, and Smarter Mathematics and ELA). The System must include the ability to clone and migrate items from one bank to another.

6. **Enter and Edit Items** - The System must provide a user-friendly front end application to enter and edit items individually. "User-friendly" is defined as allowing for efficient data entry which is designed with ergonomic placement on the screen.

7. **New Developed Items** - The System must have the capacity to develop and maintain ODE's current item types, and the capacity to develop new types of items including technology-enabled and technology-enhanced items. The System must include all aspects of item management described in Section A.7.2, including remote access.

8. **Field Test Items** - The System must have the capacity to embed field test items in the operational tests by each content area and grade/grade band.

9. **Text-to-Speech and Text –to-Braille Items** - The System must have the capacity to tag individual items and stimuli for text-to-speech and text-to-Braille capabilities. Text-to-speech must be available in Spanish, and other languages as needed (See OAR 581-022-0620, or an ODE-designated successor regulation). Text-to-Braille must be accessible through a Braille interface. The Braille interface must have the ability to present all items in Braille through either a refreshable Braille display or through a Braille embosser; items with non-text, tactile components (e.g., tables, diagrams, graphs, or flowcharts) must be compatible with embossing for tactile presentation.

10. **Accessible Portable Item Protocol (APIP) Compliant** - The System must be compliant with the Accessible Portable Item Protocol for personalized item selection. The System must support, at a minimum, those item-embedded accessibility features identified in this Contract and otherwise in governing regulations.

11. **Languages Other than English** - The System must have the capacity to operationalize items in multiple languages and bilingually. Minimally, Spanish language must be delivered in a "stacked" format (Spanish above English). The System must have the capability to add additional languages supported by ODE as required by Oregon Administrative Rule 581-022-0620 (or an ODE-designated successor regulation).

A.7.3 ITEM REVIEW

System Requirements

1. **Content Reviews** - The System must have the capacity for content review of all items for all assessments described in this Contract. ODE will convene appropriate content panels for item review. Items are accepted, rejected, or modified by the Content and Assessment Panel to make sure they represent the constructs embodied in grade-specific content standards and test specifications. In addition to judgments of content relevance, the panels appraise the technical quality of items, looking for items free from such flaws as (a) inappropriate readability level, (b) ambiguity, (c) incorrectly keyed answers and distracters, (d) unclear instructions, and (e) factual inaccuracy.

2. **Bias/Sensitivity Reviews** - The System must have the capacity for bias/sensitivity review of all items for all assessments described in this Contract. ODE will convene appropriate sensitivity panels for item review. The Sensitivity Panel typically convenes day-long in-person meetings at least once a year, supplemented by remote item review sessions. The panel reviews items from all grade levels and content areas for bias, controversial content and overly emotional issues.

3. **Rubric Validation** - The System must have the capacity for rubric review and validation for all assessments described in this Contract. ODE and Contractor will coordinate appropriate rubric validation panels for item review. Contractor shall provide staff to lead and participate in the rubric validation panel process. Items will be accepted, rejected, or modified by the Rubric Validation Panel to make sure the items are scoring correctly in regard to the item's assigned rubric specification.

4. **Accessibility Review** - The System must support accessibility review of all items for all assessments described in this Contract. ODE will convene appropriate accessibility panels for item review. The panel reviews items from all grade levels and content areas for accessibility.

Service Requirements:

Contractor's support services specific for Item Review shall include at least: One representative of Contractor shall attend one review meeting for each of the review topics (Content, Bias/Sensitivity, Rubric Validation, Accessibility) each Contract year. The representative will support the meetings in accordance with a schedule mutually determined by Agency and Contractor.

A.7.4 ADAPTIVE ITEM SELECTION ALGORITHM

Systems Requirements
1. The System must work in an uninterrupted manner with the current OAKS adaptive algorithm, described below in Section A.7.4.1. The System must have the ability to develop and administer CATs to students that meet the requirements of a traditional test blueprint, as determined by ODE. Test blueprints and associated general test specifications typically include the following guidelines:
   - Length of the test
   - Content areas to be covered and acceptable range of items within each content area
   - Acceptable range of item difficulty for the specified grade level
   - Items that cannot appear on the same test
   - Number and location of field-test items, if applicable

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2. The OAKS adaptive algorithm, as referenced above:

OAKS Online Testing Engine Rules

Rule	Implementation
Test length = X	The testing engine stops the examination when the student submits his or her answer to the Xth item.
Items	The testing engine will deliver only the items specified as available for the adaptive delivery for that subject, grade, and adaptive test. The items included in the delivery rules file limit the difficulty range and grade-level coverage. If an item is in the item bank but is not in the adaptive test delivery specification file, then the item will not be delivered.
Field-test items	The test developer specifies the items for field testing. Field test items do not contribute to the final proficiency score. The OAKS Online System ensures that the correct number of field-test items are delivered and that they are delivered within the specified location range for each test. (The test developer can specify item slot locations or random delivery.) A field-test item cannot be in the first or last few items on the adaptive test.
Item statistics	The engine uses the statistical data provided for each operational item by the test developer. These data are used by the engine to deliver the most appropriate subsequent item based on the previous response string.
Item content codes	The engine uses this classification data to monitor the content coverage. The

Rule	Implementation
	content codes are used directly with the constraint groups, and the engine keeps track of each item that was delivered and keeps score against the blueprint ensuring that all rules are followed and that tests adequately cover the content as defined by the blueprint.
Item sets/groups	The item group information tells the OAKS Online engine to deliver a set of items together on the examination form. This is helpful, for example, for sets of items related to the same stimulus. Item sets are not limited to operational items. Field-test items can also be delivered in sets.

3. Item selection within the OAKS Online engine is limited to items written for the specified grade level and is constrained to represent the test specifications, ensuring the appropriate representation of each SRC and coverage of the specified breadth and depth.

4. Each OAKS Online engine item pool contains approximately 1,000 items by grade and content area, a sufficient number of items to ensure students are presented with a test representing the breadth and depth identified in the test specifications and content standards, regardless of the item difficulty. Because the test adapts to each student's performance while maintaining accurate representation of content breadth and depth, OAKS Online results are designed to provide precise estimates of each student's true achievement level across the range of proficiency.

A.7.5 ITEM MANAGEMENT INTERFACE WITH TEST DELIVERY

Systems Requirements

The Item Management component of the System must interface with the Test Delivery component, and personalize student profile and metadata during an assessment. This must include accommodations set in a previous year, modifications to a student profile such as LEP code, Braille enabling, text-to-speech enabling, large print and other settings for individual students. This interface must also interact with the System's adaptive algorithm to comply with item masking rules, difficulty parameters, and APIP standards, including IMS and QTI.

A.7.6 ITEM AUTHORING AND DEVELOPMENT

ODE will continue authoring most items; Contractor may be asked to develop new item types and author new items for all Oregon assessments included in this Contract. Contractor's delivery of these Services will be described in the current, ODE-accepted Deliverable 5, Support Services Guide, and will reflect the ODE-approved elements described in Section 5.2.8, subsection 3.7, of Contractor's Proposal. Deliverable 5 must describe how Contractor shall address development of new constructed response item types, which could include both hand-scored and machine-scored items such as Writing Short Response, Extended Response, Performance Tasks, Simulations, Technology Enhanced items, and Technology Enabled items. Contractor shall notify ODE in writing and in advance of any updates or changes to the item management system. For all test items:

1. Texts must be drawn from sources approved by ODE. The System must track any required item and text licensing.

2. Graphics must be selected from graphic pools approved by ODE. Contractor shall not use cartoon-like or exaggerated graphics. Graphics are in place to help establish context for the text, support accessibility of the item, and to provide a basis for a response. Graphics should be as clear and unambiguous as possible, grade-level appropriate, and free of bias or stereotypes. When multiple graphics are needed for a single item, graphics of similar form and style must be used.

A.8 USER MANAGEMENT

System Requirements

The System must include a secure User Management component that tracks state, district, school, and classroom level users and students, and the relationships among them. All aspects of the User Management component must be secured by password-protected logins for access and encryption for transmission security and must meet all other requirements described in contract.

1. **State, District, and School Staff** - The User Management component must allow for the creation of state, district, school, and classroom level users and allow authorized users at the state, district, and school level to control user access and permissions within the System. Permissions must include the ability to create user accounts for users associated with the user's institution at a lower level of access, view student information, view and edit student test settings and accommodations, set up and administer test sessions through the test delivery component of the System, view student test data through the reporting component of the System, and allow authorized users to create and administer diagnostic assessments for students associated with the user's level of access.

2. **Students** - The User Management component must ability to integrate the student extract from ODE's SSID System and synchronize the student data with the test delivery and reporting components of the System. The User Management component must be able to transfer student test data back to ODE. The nature of the extraction and data transfer process must meet the requirements described in contract. The User Management component must allow authorized users at the state, district, school, and classroom level to view student information and view and edit test settings for students associated with the user's level of access.

    a. **Student Information** - The User Management component must allow ODE-authorized users to view student information based on the student data extracted from ODE's SSID System including, for students with disabilities, any individual appropriate accommodations necessary to measure the child's performance on the assessment(s) stated in their IEP. The System must use this student information to control student eligibility to access certain assessments by grade and content area within the System. The System must allow access to assessment(s) based on a match between accommodations stated on the IEP and information contained within the User Management component to ensure equity of assessment administration for students with disabilities.

        A. Information to be displayed to users must include:
        * Student Name
        * SSID, Student
        * Date of Birth,
        * Grade of Enrollment
        * Accommodations (if applicable)
        * Limited English Proficiency (LEP) Flag

        B. Information that will control eligibility to access assessments must include:
        * Grade of enrollment
        * Accommodations (if applicable)
        * Limited English Proficiency (LEP) Flag

    b. **Student Test Settings** - The User Management component must allow ODE-authorized users to view and edit test settings for students. This includes the ability for authorized users to apply the accessibility features listed in contract.

A.9 SECURE DATA COLLECTION, MANAGEMENT, AND TRANSFER

System Requirements –

The System must collect performance data about individual student assessments. The following categories describe logical groupings of data that must be maintained in the System. The physical organization of data may vary from the logical groupings listed below based on System design and performance considerations. References to districts and schools include both resident and attending institutions.

A9.1   Data Categories

1. **Student Identifier -** First Name, Last Name, Middle Initial, Suffix, Gender, Birth Date, Current Grade.

2. **Secure Student Identifier (SSID) Number -** State assigned code.

3. **School District Identifier Number -** Individual school district "Student Identifier" where one is used by the district.

4. **ODE District Institution Identifier -** Numeric institution identifier assigned by ODE for primary school district of enrollment.

5. **Institution Identifier -** Numeric institution identifier assigned by ODE for primary school of enrollment.

6. **School District Name.**

7. **School Name -** Primary school of enrollment.

8. **Unique Staff Identifier (USID) Number.**

9. **Instructional Unit Identifier (IUID) Number.**

10. **Subject Code for Teacher/Classroom ID or Period -** This may or may not correspond to the subject of the test taken by the student.

11. **Alternative Institution Identifier -** Identifier if student attends a school or alternative program other than the primary school of enrollment.

12. **Test Subject Code -** Identifier of test subject (e.g., math, science, etc.).

13. **Individual Question and Response Data -** Information about specific test questions, sorted by grade level and strand, including student responses, student response time, and a flag indicating whether the student responded correctly, must be maintained.

14. **Scale Scores -** Estimates of student ability on ODE's item response theory (IRT) scale by total test and content strand

15. **Student Performance Level -** Classification of assessment results by performance standard. The standards are listed at: http://www.ode.state.or.us/search/results/?id=223.

16. **Test Administration Code -** Indicator of special circumstances surrounding the administration of a test event.

A9.3   Functionality

1. The System must generate labeled and transportable data files in ASCII, CSV and XML formats for ODE applications for the purpose of generating school and district summary reports. The System must provide an Application Programming Interface (API) compatible with the Smarter IT Systems Architecture (Section B.3.1.).

2. The System must comply with the Smarter IT Systems Architecture referenced in Section B.3.1.

3. The System must transfer and store all data collected by the System, and integrate with other ODE-designated systems consistent with the Smarter IT Systems Architecture. When tests are delivered, a significant amount of student data must be collected. The System architecture must consider data volumes and purging strategies, and the System must allow for manual input of data. The System's data mapping processes must support a mass import process, software programs, verification procedures, and error reports.

4. The System must include a Data Warehouse and Data Aggregation Services with the capacity to contain information moved from the Test Delivery component(s), as well as other sources identified during requirements gathering, throughout the Contract term. Data must support the reports described in this Contract, as well as psychometric, security, auditing, ad hoc analysis, and other activities. The System must allow queries against the data to be executed using different points in time as search parameters. The System must be accessible via Contractor's provided relational database (i.e., SQL).

A.10 SCORING

System Requirements

A.10.1 Scoring for Selected Response and Machine-Scored Constructed Response Items

a. The System must give accurate, timely assessment results to ODE with and support ODE's electronic capability to disseminate scoring results to school districts. This includes the results of machine-scored tests for applicable content areas. The System must make scores for at least OAKS Science and Social Sciences assessments available to students and teachers immediately after the student has completed a testing opportunity. All machine-scored items must be scored and scores available via System within one calendar day.

   A. The System must give accurate and timely results of assessments for the ELPA. The ELPA contains selected response and machine-scored and hand-scored constructed response items. The System must make scores for this assessment available to districts (including teachers) within a timeframe approved by Agency.

   B. Smarter ELA and Mathematics – The Smarter Math and ELA assessments contain selected response and machine-scored and hand-scored constructed response items. The System must make scores for these assessments available to districts (including teachers) within a timeframe approved by Agency.

b. The System must employ the SSID System to identify each student and to ensure the accurate matching of the student to test results.   Agency shall supply the SSID and upload student files to Contractor on a daily basis.

c. The System must generate student scores using CAT methodology. IRT scoring models must be used for all assessments.

d. The System must perform the scoring of Smarter Mathematics and ELA assessments in accordance with specifications published by the Smarter Balanced Assessment Consortium. The System's scoring engine for Smarter Mathematics and ELA assessments must encompass the full range of the Smarter Balanced metric.

A.10.2 Scoring for Hand-Scored Items

1. **Human Scoring** – Contractor shall perform hand-scoring for Smarter Mathematics and English Language Arts elements in accordance with specifications published by the Smarter Balanced Assessment Consortium for constructed response and performance task items.

2. Contractor shall accurately perform Hand-scoring of applicable within 45 calendar days of the relevant test delivery date.

A.11 REPORTING

System Requirements

1. The System must provide detailed reports available to ODE and stakeholders, including ODE-authorized users at the state, district, and school level, through the reporting component of the System.

2. The System must define the precision of the assessment data upon which the reports are based.

3. The reports generated by the System must provide insight into the relative academic strengths of students and classrooms and mastery of state content standards at both the student and classroom level.

4. The System must meet or exceed the scope and capacity of existing reports provided through Agency's current assessment system. (http://www.ode.state.or.us/wma/teachlearn/testing/oaks/oaks_reports_userguide.pdf).

5. The System must provide at a minimum the following Reporting functionality:
    a. Ability to still see results for a test window after the test window has closed.
    b. Ability to see historical scores for current students who were previously at a different school or district.
    c. Teachers access their students' records, regardless of whether the teacher was the person who administered the test to the students.
    d. Ability to "bank" scores, so high school tests taken in previous years that met or exceeded the performance standard at the time can be counted toward participation and performance during the student's grade of accountability.
    e. Ability to view results with banked tests included or excluded as appropriate for test administration grade.

6. The System, including all features, navigation pages, utilities, reports, System-generated documents (e.g., Word, Excel, PDF), query results, and other information must meet all Smarter Balanced Section 508 criteria referenced in this Contract.

7. Software applications and operating systems deployed in the System must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/checklist_1194_21.pdf).

8. Web-based intranet and Internet information and applications deployed in the System must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/checklist_1194_22.pdf).

9. Functional performance of the System must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/checklist_1194_31.pdf).

10. System information, documentation, and support must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/checklist_1194_41.pdf).

11. Word documents delivered by Contractor as part of the Services or System must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/word_checklist.pdf).

12. Excel documents delivered by Contractor as part of the Services or System must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/excel_checklist.pdf).

13. PDF documents delivered by Contractor as part of the Services or System must comply with Smarter Balanced Section 508 criteria (http://www.section508.va.gov/docs/adobe_checklist.pdf).

14. Performance reports must be accessible through the System portal and support both static report displays and dynamic customized reports based on Contractor-provided, Agency-approved data-mining tools.

15. The System must allow the creation of reports containing interactive roll-up, drill-down, group, sort, and filter settings, and allow data to be shown in multiple data display formats (e.g., pie chart, cross-tab).

16. The reports generated by the System must be tailored to each major user group (as agreed upon with ODE) and allow for varying degrees of customization, depending on the needs of the particular user group.

17. Test results must be provided online and ready to print for three (3) languages beyond English (i.e., Spanish and two (2) languages to be determined by ODE based on results of the Home Language Survey).

18. The System must deliver reports via multiple secure delivery mechanisms, and in multiple formats (e.g., Excel, PDF, HTML), to ODE-authorized users.

A11.2 Summative Assessment Reports

1. The System must provide summative assessment reports for all applicable assessments, including OAKS Science, Social Sciences, and ELPA assessments.

2. Summative assessment reporting must include snapshot, longitudinal, and participation reports.

3. The System must be able to provide summative assessment reports for the Smarter Mathematics and ELA summative assessments, based on Smarter's specifications and reporting requirements.

A11.3 Diagnostic Reports

1. The System must provide diagnostic (e.g. formative, interim) reports for each subject covered by a summative assessment. The interim assessment reporting will have all of the reports and features of the summative. The "formative" is not a set of student activities for Smarter, so this is not applicable.

2. Diagnostic assessment reporting must include snapshot, longitudinal, and participation reports. The interim (diagnostic) reporting will include the same snapshot, longitudinal and participation reports as the summative.

A11.4 Forensic Reports

1. The System must provide forensic reports designed to detect testing improprieties for each subject covered by a summative assessment.

2. Results to users and to Agency within one (1) calendar day of when scoring is completed unless otherwise mutually agreed upon by Agency and Contractor.

A11.5 Other Reporting Requirements

Contractor shall provide the following reports to Agency monthly, in arrears, or as otherwise reasonably required by Agency.

1. The System must provide Agency-acceptable output formats for reports, such as Word, PDF, and Excel.

2. The System must interface with Agency-acceptable reporting technology (e.g., Crystal Reports).

3. The System must provide required period reports within required timeframes.

4. Contractor shall capture the necessary System events to monitor, verify, and report on the SLA commitments as part of Deliverable 8. The status of these metrics is due monthly (by the 15th business day following the month being reported), or Agency may presume all performance metrics were missed. The "reporting period" will be the previous month, unless another definition is agreed to by both parties.

5. Contractor shall produce as requested by Agency ad hoc reports to address specific management questions such as but not limited to:
   a. Data backup logs
   b. Response time and down time reporting
   c. User accounts and domains
   d. System event logs to track System application and security events
   e. System access summary reports
   f. Results of load tests
   g. QA reports of tests
   h. Help Desk/Ticket/Resolution logs (Agency accessible database)

A.12 TRAINING AND SUPPORT

A.12.1 Service Requirements – Training

1. Contractor shall provide online test administration and security training segments based on ODE's Test Administration Manual to certify staff to serve as test administrators.

   a. ODE contracts with Educational Service Districts (ESDs) to support the implementation of Oregon's online assessments. The ESDs provide help desk and onsite technical and training services. Regional Assessment Support ESD Partner contact information is up to date at: http://www.ode.state.or.us/go/assessmenthelp. This training must be accessible online, via webinar, or onsite, per the discretion of ODE.

   b. Contractor shall have the capability to train approximately 500 people.

   c. In accordance with the approved Deliverable 6, Contractor shall provide Agency and ESD staff training sufficient to ensure Agency and ESD staff may provide continuous virtual and onsite training to school districts and schools regarding the implementation of the System.

   d. Contractor shall provide staff to answer technical and detailed questions regarding assessment design, implementation, and logistics.

2. Contractor shall provide staff to join with Agency to provide annual test administration and security training to district and school staff based on a mutually agreed upon schedule described in Deliverable 6.

A12.2 Training Deliverables

1. Training for ODE and ESD Staff - Contractor shall train ODE staff and ESD staff to enable them to provide ongoing onsite training and support to school districts on how to use the System.

2. Contractor shall provide a training plan and schedule prior to the beginning of each school year which is aligned with the annual testing schedule prepared by ODE.

3. Contractor shall provide materials for the annual Test Administration and Security Training for District and School training reflecting any updates or improvements to the System, up to and including online certification, and a training application component.

4. Documentation in the form of manuals, tutorials, and other tools for training and support that facilitate understanding and learning how to use the System in an efficient and effective manner.

5. Documentation of Interpretive guides, graphic displays of data, and text focused on the particular needs of teachers, school and district administrators to support the effective use of student performance results.

A.12.3 Systems Requirements – Help Desk Support

In accordance with the Agency-accepted Deliverable 5 and Exhibit J:

1. Contractor shall provide ongoing "Help Desk" support to the school districts with real-time assistance to Agency, ESD, school district, and school-level users during the annual test window determined by ODE.

2. Contractor's Help Desk shall respond to all requests submitted to the Help Desk in a timely fashion. Average response time for questions not exceed 4 business hours as a "best practice".

3. Agency will follow the Escalation Protocol described in table below to escalate issues indicating either a potential statewide impact or potential invocation of a service level agreement. Contractor shall coordinate with Agency during the resolution of all escalated issues to ensure timely resolution and communication with impacted users of the assessment system.

Escalation protocol

Step	Description of Step	Primary Lead
1	Monitor System Status	Contractor Production Lead
2	Decision Point: Is Issue one that may have to be Escalated? If YES, continue to Step 3	Contractor Production Lead
3	Document Issue	Contractor Production Lead
4	Inform Contract Administrator of Issue	Contractor Production Lead
5	Decision Point: Does Issue need to be Escalated? If YES, continue to Step 6	Agency Contract Administrator
6	Prepare Communication	Agency Communications Coordinator
7	Release Communication	Agency Communications Coordinator
8	Follow-up with Contractor	Agency Contract Administrator
9	Follow-up Communication (as required)	Agency Communications Coordinator

A12.4 System Deliverables

1. Contractor shall maintain a list of any questions submitted to the Help Desk taking more than one business day (24 hours) to resolve, and make it available to Agency upon request.

2. Contractor shall detail the procedures and contact form(s) for incident tracking and communication with stakeholders. This procedure must include a tracking system with incident numbers (case or ticket) for communication with caller, school district, ESD partners, and Agency.

3. Contractor shall provide user manuals for each System component which support training for users at the ESD, school district, and school level on the use of the System. Each user manual must contain sufficient information to describe the process users will experience when using each System component and identify the steps a user might take to solve common technical problems.

4. Contractor shall provide technical assistance documentation in the form of frequently asked questions or technical assistance briefs. Contractor shall be responsible for reviewing and updating all documentation annually or as required by Agency to ensure the information contained in the manuals is correct and current.

5. Contractor shall provide an electronically accessible technical manual which describes each component of the System in-depth including the item management process and specifications, test design as supported by the System, the item selection engine, reports, as well as formats used for student test results and item responses. Agency will incorporate the technical manual into Oregon's Assessment technical manual and any subsequent federal compliance reviews. Contractor shall amend the manual if required by external audits of Agency or as required or recommended following federal compliance reviews.

A.13 SERVICES MANAGEMENT AND STAFFING

A13.1 Service Requirements

Contractor shall provide sufficient staff to deliver Services and Deliverables in accordance with current, accepted Deliverables and applicable Service Level Agreement provisions (Exhibit J).

1. A full-time (1.0 FTE) Project Manager as a Key Person who will have overall, daily responsibility for the implementation, delivery, and operation and maintenance of the System. This Key Person must be dedicated to ODE and responsible for project management and coordination with ODE.

   Contractor's Project Manager is responsible for:

   a. Managing and updating Deliverable 1, the Project Implementation Plan and schedule to reflect progress and Agency-acceptable changes to the plan during implementation (See Section A.15 of this Exhibit A).

   b. Ensuring all Contractor staff and designated Agency staff is aware of scheduling changes.

   c. Maintaining the Project Implementation Plan and schedule.

   d. Conversing directly, at least weekly, with the Agency Project Director to discuss the work plan and schedule. Weekly conversations may be by telephone.

   e. Provide status reports on at least a weekly basis summarizing status against the work plan, key accomplishments, upcoming activities, and issues.

f. The two Project Directors will meet in person on a mutually agreeable schedule. The Agency Project Director will review and approve all work plan and schedule changes in writing.

2. Psychometric and analytical services necessary to meet federal review of the System, and to support the maintenance of Oregon's Assessment System Technical Manual.

3. Staffing to support the review panel activities, training, security, and administrative services referenced in this Statement of Work.

4. Contractor must manage all System Quality Assurance activities, including but not limited to:
   Developing a user acceptance test plan
   Developing test scripts
   Testing all software components
   Parallel testing (if parallel processing is appropriate)
   Security testing
   End user activity testing
   Data Warehouse and Management Services testing
   Hardware and network capacity testing
   Integration testing
   Load testing

5. Contractor shall provide on-site support at the Agency for implementation and post-implementation maintenance.

6. Contractor shall communicate with Agency to ensure all activities are coordinated by keeping Agency informed throughout the period of performance.

7. Contractor shall be responsible for facilitating all in-person and online/teleconference meetings with Agency necessary to complete Implementation and maintenance and support Services.

8. Contractor shall plan, coordinate, and stage the delivery of all software and services required to implement and support the System. Client computer hardware, including personal computers and local printers, will be independently obtained by the local schools.

9. Contractor shall report, all System errors to Agency within 24 hours. Contractor shall provide an issue tracking and management tool via its document management system (currently "KnowledgeTree Document Repository;" see Exhibit N, Section 5.2.6) containing a comprehensive list of all open and closed issues pertaining to the work being performed. This tool must document information on the source of each open issue, how it was identified, System impact, and how and when Contractor proposes to resolve the issue.

10. Contractor shall maintain a communication strategy ensuring Agency will be informed by Contractor in advance of changes which may disrupt service to System users.

A13.2 System and Services Deliverables

1. Provide written meeting minutes and documentation of all Agency-accepted decisions made during contract activities (e.g., reviews, decisions, conference calls).

2. Provide Agency staff read-only access to tracking and management tool for all open and closed issues pertaining to work being formed.

A.14 TECHNICAL OBJECTIVES

A.14.1 System Requirements

1. The System must be hosted on Contractor's or an authorized subcontractor's site and must integrate with Agency data and test item and test construction systems, allowing for the efficient transfer of data and test items between Contractor and Agency. Contractor has proposed, and as of the Effective Date of this Contract Agency has accepted, Rackspace, US Inc, a Texas corporation, as a hosting site.

    a. The security of personally identifiable information and individual test results must be maintained. The System must include limited access to student data and reporting tools credential-dependent to ensure student privacy and protect the security of individual student results. Individual test information may only be made available to Agency and authorized ESD, district, and school-level personnel. No other individuals or organizations may be allowed access to test results through the System.

2. The System must operate within existing and planned communications infrastructure, including T-1 lines, which have been installed in all Oregon schools. School districts, educational service districts, and Agency's technology architecture and computing hardware will not be replaced.

3. The System's design must be flexible so software modifications, database changes, and reporting requirements can be made efficiently and cost effectively.

4. The System must be scalable to accommodate, over time, testing all Oregon public school children.

5. Tests must be delivered within a secure browser restricting the access to the desktop and web based on the requirements of Agency. The secure browser must function (and be maintained) on current releases of Linux, Windows/Intel, and Macintosh (Intel and Power PC chips) systems. Reading passages and math problem solving vignettes should be printable from within the secure browser. Effective as of the Effective Date, Contractor must support Windows XP, Vista, 7, 8, Windows Server 2003 and 2008; Mac OS X 10.5-10.8; Linux Fedora 6 (K12LTSP 4.2+), Ubuntu 9-12, SUSE Linux Enterprise Desktop, and 11 with Gnome; Android 4.0.4; Apple iOS 6; and Chrome OS v. 19. Contractor must support subsequent releases of these platforms to ensure schools can test using most devices in schools.

6. The System must interface with Agency's Assessment Database. The System must also be able to interface with Agency's Computerized Item Management System (CIMS).

    The System must support a means by which student SSID, first name, last name, grade level, and grade level to be tested can be uploaded in comma delimited format from Agency's database. Data must be returned to Agency in the format it was sent. In addition, the System must support a means by which items will be periodically loaded and updated from Agency via a text format (i.e. XML) which comprehensively describes the entire item including the item stem, item answers, and distracters, as well as graphics and passages. The System must support a quality control process in which Agency can extract items (IMS QTI with some APIP tags) in order to compare to Oregon's versions of the items.

7. The System must comply with the Smarter Balanced IT Systems Architecture.

8. The System must allow schools and school districts too quickly and easily access tests from the bank of items (questions) for each subject and performance level. An individual test must be easily and quickly created with no programming assistance. Questions in each item bank must be easily maintained and secure from unauthorized access.

9. The System must support the following:

   a. Password-protected access to the System.
   b. Remote secure data transmission from schools/school districts to Contractor.
   c. Automated validation of student tests.
   d. Generation of pre-defined reports.

10. The System must be designed to conform to existing technology installed in school districts and Agency. The System must adhere to Agency's Technology Architecture Plan and state technology and communication standards.

A.14.2 System Requirements:

1. Users must be able to access the System using a secure browser from current versions actively used in schools of Linux, Windows/Intel based personal computer, or a Macintosh.

2. Users will use web browsers with current W3C HTML 4.01 compatibility or comparable access tools used by school districts.

3. Access to the System provided for student testing during normal school workdays.

4. Any component of the online System that involves outsourcing application operations hardware support must include 24-hour onsite response time for repair and replacement of equipment, seven days per week.

5. Software maintenance for third party products must include 24-hour telephone support, seven days per week, and product upgrades.

A.14.3 Computer Adaptive Testing –

The System must utilize CAT restricted within grade level. The current OAKS System uses both a CAT design with testlets and item-by-item adaptations. The selection of items must fit the test design including the balancing of content within the test.

A.14.4 File Volume and Retention Requirements:

This section describes current and projected file sizes and retention requirements necessary to support the System.

System Requirements

1. The System must support collecting and maintaining records for students as they move through the school system. When fully populated with data for all Oregon students during their grade 3 – 12 enrollment and tests are given in all grades (3 – 12), the System could grow to over 70 million test results. Each test result will consist of multiple individual test items and answers.

2. An individual student's test results must be maintained online for a period of approximately 13 years (Kindergarten – 12). Following high school graduation, the student's records will be archived and maintained off-line for a period of 4 years or until the student's 22nd birthday, whichever occurs first.

3. The System must provide data to the current Assessment Database System to store historical student assessment data.

A.14.5 Application Availability

System Requirements

1. Users must be able to access the System using Linux, Windows, Macintosh desktop computers, and Android, Windows, and iOS mobile platforms. Contractor shall have and implement a plan for supporting new OS releases in a mutually agreed upon timeframe.

2. The System must support access to data using Microsoft Access, Brio Query Tool, and web browsers with HTML 4.0 compatibility or comparable access tools used by Agency.

3. Access to the System must be provided for student testing during normal school workdays.

4. Access to System reports and queries must be provided on a full-time basis consistent with Agency's normal System availability policies, 24 hours/ 7 days per week except for a maintenance period from 10 p.m. Friday to 8 a.m. PT Saturday or during other periods as mutually agreed to by the Agency and the contractor.

A.14.6 Security and Authentication

System Requirement

Contractor shall keep the data within the System confidential to protect individual student's privacy consistent with Oregon public records laws and FERPA. Access to the System must be authenticated, including password protected access, secure transmission and secure socket layers for internet access.

A.14.7 Technology Standards

System Requirement

All hardware and software for the System must adhere to state and Agency technology standards which are located at: http://www.oregon.gov/DAS/IRMD/CIO/pol_index.shtml http://www.oregon.gov/DAS/IRMD/statutes_index.shtml

A.14.8 Summary Software Functional Requirements

Summary Software Functional Requirements

	Required Functionality
Accessibility	The System must be in compliance with Section 508 and ideally with the Web Content Accessibility Guidelines 2.0. The substantive content (e.g., items) must be associated with meta-data that describes any changes that will be made to the content, display, or input method necessary to provide appropriate accommodations support to the student. In addition, the overall approach must leverage the use of computer-based accessibility tools, driven by an item tagging system that will control and ensure appropriate application of those tools.
Authenticate & Secure Transactions	The System must dynamically link to Agency SSID data to authenticate or register a student for testing. There must be a method for a student to securely connect to the web without being able to access the internet IP or other passwords.
Exportable Files	The System must provide both student level and item level data. Output file must match Agency specifications. All items/test history/variables/statistics including but not limited to item engaged time, response by item etc.
Field-Test Items	The System must support a field test item process that includes random item insertion into

	Required Functionality
	appropriate tests and variable number of field test items within a test.
Item Delivery	The System must prevent students from being presented with the same item more than once. This function must be able to be turned off if there are insufficient items to do the masking.
Item Exposure	Provide information to Agency so Agency can manage item exposure rules such as 50% of the operational items exposed in the current year, cannot have been exposed in the prior two years.
Item Types	Multiple-choice with one response. Presentation of passages with a number of linked items or testlets. Other item types are but not limited to: graphic response, hot text, equation response, proposition response, essay response, simulator interactions, spoken response
Language	Tests must be available in both English and stacked Spanish/English. Additional translations must be viable if Oregon demographics change sufficiently to require this service consistent with OAR 581-022-0620.
Production Cycle	The System must have separate development and production servers for quality assurance and version control
Reports Available	The System must support all Assessment Reports currently available for OAKS as illustrated in the OAKS Users Guide at http://www.ode.state.or.us/wma/teachlearn/testing/oaks/oaks_reports_userguide.pdf. Additional reports may be required in the future such as but not limited to diagnostic and forensic reports.
Response Mode	Comply with the provisions of the Americans with Disabilities Act of 1990, including capacity to adjust font size, background color, Braille pin-reader, Braille and image embossing, and read aloud text (Spanish and English). Accommodations should be controlled by school test coordinators from an administrative screen.
Review of Items	The System must include a secure administration GUI that allows for review of available tests, items inserted into the System, as well as import and export of test items. Methods must be available to check item availability in development vs. production vs. ODE's records.
Scoring Metric	The System must include an online computer adaptive test engine that supports the full breadth of Oregon's metric. All reports, computations, and internal operations must be based on Oregon's test metric.
Secure Student Information	The data within the System must be kept confidential to protect individual student's privacy consistent with Oregon public records laws and FERPA.
System Availability	The System must support System availability during school hours, as determined jointly with Contractor and Agency.
Test Interruption	The System must be able to recover data from any unforeseen test interruption and return the test-taker to the point of interruption. Tests will expire if not competed after 45 days from the day the test was started.
Test Organization	Online objectively-scored (selected response and machine-scored constructed response) tests must use Oregon's current method of Computerized Adaptive progressive item presentation. Both testlet and item adaptation must be available. The System's choice of initial item to present to the student should be based on median RIT value for the grade or previous scores obtained by the student.
Tests	English Language Proficiency (ELPA) grades K - High School; OAKS Science, grades 5, 8, and High School; OAKS Social Sciences, grades 5, 8, and High School; Smarter ELA assessment, grades 3 -8 and High School; Smarter Math assessment, grades 3-8 and High School. The System must include a methodology to estimate test-retest reliability by allowing some

	Required Functionality
	students more than 1 opportunity.
Training	Contractor must provide on-going training and support to ESD Assessment and Accountability Helpdesk Partners and Agency Project Team.
Use of Secure Student ID	Student test records must be identified with Oregon's Secure Student Identifier (SSID). Agency will supply the SSID to Contractor. All test delivery processes must then explicitly identify the means by which the SSID link is maintained.
Users	The System must support a minimum of 10,000 concurrent users with a mean refresh time of less than one second.

The System must quickly and easily adapt to meet Agency's functional and technical needs.

A.14.9 GENERAL FUNCTIONS

System Requirements

1. System parameters must be user-defined without changing the source code of the application.

2. Functions of the System must be fully accessible to users online, or may be performed in a "batch" mode.

A.14.10 Data Dictionary -

System Requirements

1. The System must have an active data dictionary function including cross-reference between data elements, recording and tracking, output definitions, outputs, screen displays, etc.

2. The System must have a detailed system model and entity relationship model, with on-line user-defined fields. The data dictionary must update with these elements.

3. The System must allow user-defined data elements within the System, by report writers, System security, edit criteria, etc.

4. The System must allow global changes to data elements.

5. The System must accommodate the creation of additional user-controlled data tables

6. **A.14.11 User Interface Elements**

Systems Requirements

1. The System must include and maintain industry standard interfaces (e.g., menus, function keys, mouse, user definable screen patterns, context-sensitive on-line help, GUI, etc.).

2. The System must include and maintain adaptable tools such as tables, user definable codes, user exits with documentation, etc.

3. The System must maintain "active" tables in a manner that maximizes availability of real-time data (e.g., effective dates, calculation capabilities, logical or qualitative value communication between tables, link of tables, etc.).

4. The System must maintain all security requirements over tables.

5. The System must provide on-line help functions to the user.

6. The System must define default values for on-line screen fields the navigation options presented in multi-screen processes.

A.14.12 Input Validation and Processing -

Systems Requirements

1. The System must allow and maintain data edits for appropriate field content, validity, relational edits, etc.

2. The System must allow relational edits that are Agency defined system user error displays.

A.14.13 Security and Authentication -

System Requirements

1. The System must provide security controls over all System aspects.

2. The System must provide Agency-acceptable "levels" of security within the System.

3. The System must provide the ability to limit access to specific System functions or modules, by user type.

4. The System's authentication process must ensure an individual is the person logging-in to the System (e.g., the student taking the test is who they say they are, or the test administrator in the User Management component s who they say they are).

5. The System must be accessible via a secure browser connection and web portal (i.e. a web based application which supports the presentation of tests to students) that restricts functionality by user type.

6. The System must restrict students to ODE-specified test types within the System, to appropriate accommodations and accessibility features, and to the number of times they can access tests.

A.14.14 Historical Data -

Systems Requirements

1. The System must archive and maintain detailed test results (test history) in off-line storage.

2. The System must store historical on-line information for periods of time that meet all data storage and record-keeping requirements of the Contract.

3. The System must allow Agency ability to archive data off-line through user-controlled purge criteria.

4. The System must have the ability to restore archived data into the current system, use it, and then purge it in a controlled manner, retaining the archived data off-line.

A.14.15 Documentation –

System Deliverables and Requirements

1. The System must provide user documentation for the System procedure for updating standard user documentation for the "unmodified" software.

2. The System must include tools to allow users to modify and maintain custom user documentation.

3. The System documentation must include at a minimum processing flow, System process model, System flowcharts, and documentation of user exits, data model, and table names and descriptions.

4. The content system's operator documentation must include at minimum job setup, file mounts, hardware resources, and output distribution instructions, processing recovery and restart procedures.

5. The System's operator documentation must describe at a minimum job control language, scheduling dependencies, interface processing times, error codes, etc.

A.14.16 Technical System Performance -

1. The System must allow record-level locking and ensure data integrity.

2. The System must include Agency-acceptable automated backup, recovery, and restart procedures.

3. The System must prevent simultaneous updates to the database.

4. The System must be accessible and fully functional by users on Windows/Intel, Linux and Macintosh user workstations. The System must interface with current versions plus at least one prior version of these operating systems.

5. The System must support 10,000 concurrent users, and maintain one-second response time for student test conditions.

6. The System must automatically restore all databases, including indices, pointers and tables, to a status prior to any System-wide failure.

7. The System must allow Contractor to manually restore all databases, including indices, pointers and tables, to a status prior to any System-wide failure to support reports made available to teachers during peak testing periods.

A.14.17 Technical Support

Systems Requirements

1. The System must provide notification of System defects in an efficient and timely manner. All system errors must be reported to Agency within 24 hours.

2. The System must provide system support through email, and through a telephone number, at a minimum, during Agency business hours (8am-5pm Monday-Friday, Pacific Time, excluding holidays) and otherwise as needed to ensure accurate deployment of System components according to a mutually agreed upon schedule.

3. The System must track individual trouble calls and its reporting of System problems to Agency.

A.14.18 Software Development -

1. The System must be accessible and usable via Android, iOS, and Windows mobile devices.

2. The System must be scaleable and have the capacity to expand services to reflect future software development and enhancement. New versions of System components that are issued by Contractor within the first Contract year (365 days following Effective Date) will be implemented as part of the System within 60 calendar days of release as upgrades at no additional cost to Agency.

3. The System must allow a migration path to new versions, including technological changes.

A.14.19 System Operation Requirements -

1. **System Operations Processing and Security**

   The System must have backup, business continuity, change management, and security provisions that meet Agency's needs, including the following:

   a. All materials backed up in full at least weekly and backed up incrementally nightly.
   b. All backup files stored off site in a secure, locked fireproof location. Database information must be logged in real time and recoverable up to the point of failure so no data is lost.
   c. Automated System monitoring to ensure service availability and to detect anomalous System behavior and service interruptions.
   d. A method to examine system and error logs at least daily to minimize and predict system problems and initiate appropriate action.
   e. A backup site with all equivalent hardware and software needs in place to allow failover in the event of a problem at the primary host facility (up at second location within 4 hours).
   f. Communication lines, of sufficient capacity so connection to the System is not disrupted, from multiple different communication vendors and locations in the event communication lines go down.
   g. Hosting on multiple application/web servers to provide instant failover in the event of primary host site failure.
   h. Association with a minimum of two database servers that provide for instant failover in the event of primary database host site failure.
   i. Back-up power to allow operation without the primary power source for a minimum of 12 hours.
   j. Disaster recovery plan in the event of a disaster (e.g., fire) at the hosting facility that allows the System to be up and running within 24 hours.
   k. Security plan that meets all Contractual obligations and industry standards for physical access, electronic access control, intrusion protection and virus protection should be in place and documented/updated on at least an annual basis.
   l. 24/7 maintenance and support agreements for all hardware and software used by the System.
   m. Current versions of all software used in the System; all software should use either the most recent version or one version back—nothing older.
   n. 24/7 on-site systems engineers.
   o. Method of System backup and retention of data to ensure adequate recoverability from System processing bends.
   p. Method to rerun processes.
   q. Controls to ensure only authorized and tested changes are made to source and compiled code.
   r. Procedures to ensure adequate program configuration management.
   s. Controls and procedures for operations problem management.
   t. Controls and procedures for operations change management.
   u. Security and authentication policies and procedures

A.15 Implementation and Operations and Maintenance Services

A.15.1 Overview

a. "Implementation" refers to all efforts required to provide a complete and functioning System and to prepare Agency and Oregon public schools to use it effectively. This incorporates technology and implementation planning, software fit/gap analysis, software integration, software modification, testing, training, conversion assistance, documentation, and post-implementation software support. This section A.15 describes the agreed-upon methodology for System Implementation and Operations and Maintenance Services:

    A. Step I - Project Planning and Fit/Gap Analysis

    B. Step II –System Prototyping and Customization

    C. Step III - System Implementation

    D. Step IV - Post-Implementation Support- Maintenance and Operations

b. The functional and technical features of the System must meet all requirements identified in the Contract, including this Exhibit A, Statement of Work.

c. Contractor shall meet all Milestones and deliver all Deliverables in accordance with the Milestones and Deliverables Schedule in Section A.17.

A.15.2 Step I - Project Planning and Fit/Gap Analysis

1. **Project Management, Project Implementation Plan and Status Reports.** Contractor must develop and deliver a Project Implementation Plan, Deliverable 1, to cover the period from Contract execution through the first year after Agency's Final Acceptance of the System (Implementation Period). Contractor shall provide written Weekly Status Reports (Deliverable 3) to Agency designated staff at least until Final Acceptance. The Plan and its execution must comply with Agency-acceptable project management protocols, including at least the Project Management Body of Knowledge (PMBOK), 5th Edition, and Agency-authorized Agile methodologies. Any Agile methodologies utilized by Contractor must be mapped back to a PMBOK framework.

    a. The Project Implementation Plan must at a minimum:

        A. Provide a detailed proposed schedule for all implementation, maintenance, and production activities, and include at least key activities, and all Milestones, Deliverables, Key Persons, subcontractors, and durations and key dates necessary to accomplish the work described in the Contract;

        B. Include any agreed-upon involvement of Agency staff;

        C. Address implementation of all Services and Requirements; and

        D. Address engaging district-level participation for substantive input during the Implementation process.

        E. Define significant risks to the project. Contractor shall identify how they intend to effectively monitor and mitigate these risks, including reporting of risks to Agency. For any risk that could jeopardize any phase of the implementation timeline, Contractor must include a proposed contingency plan, including triggers (Deliverables or Milestones missed) that would be used to determine whether to execute the contingency plan.

F. Specify any Agency-accepted Agile principles and methodologies to be deployed in delivery of the System or Services.

G. Reflect the management approach described in Section 5.2.6 of Exhibit N (pages 14-27 within that section).

H. Outline content and delivery schedule for the schedule, planning documents, tracking documents, and specification documents described in Exhibit N, Section 5.2.6 (pages 15-27 within that section).

b. The Weekly Status Reports must at a minimum:
A. Document progress on Implementation Period activities, including agreed upon and suggested updates to the Project Implementation Plan. Access to the dashboard tool will be given to Agency-designated staff to view real-time status of Implementation Period activities;

B. Include a "dashboard" tool of commonly used project management measures; and

C. Include notes or other documentation of any status meetings held by the parties' project managers.

D. Include documentation of sprint review meeting activities and decisions.

2. **Technical Systems Requirements:** Contractor shall gather and document detailed technical Systems Requirements for the System, and deliver a Requirements Validation Report (Deliverable 2). This Deliverable must address at a minimum the following:
   a. Technical Architecture Definition
   b. Server hardware and software Requirements
   c. Networking Requirements and diagrams
   d. Database, data storage and archiving Requirements and approach to systems management and monitoring
   e. Middleware and integration software Requirements
   f. Security Requirements and approach for applications, data, and user access
   g. Interoperability protocols and interfaces
   h. Performance capacity (number of users, concurrent users, number of transactions to be handled, anticipated response times for each component, peak usage), maximum and minimum number of concurrent users for each component, data integrity, firewalls, failover approach, redundancy and recovery, reliability, and availability.
   i. Detailed Requirements for each component. The Requirements must address areas including but not limited to the following:
      A. Security
      B. Component-to-component
      C. User authentication and authorization
      D. Item-level security
      E. Student data security
      F. Data at rest
      G. Specifications listed in Exhibit N, Section 5.2.6-6 (Specifications Documents)

3. **Ongoing Application Hosting and Maintenance:** Beginning with production use of the System prototype, Contractor shall provide Services (including staff) to provide Operations and Maintenance support of the System. This support will overlap the phased implementation of ongoing development activities for the remaining System functionality, Services, and Deliverables.

4. **Fit/Gap Analysis and System Design:** Contractor shall develop, gain Agency authorization, and manage all configuration and integration activities against a detailed specification and design plan (Fit/Gap Analysis)

identifying exactly how software accommodates Agency's requirements, and the labor required to implement each requirement. The Fit/Gap Analysis must identify Agency and Contractor's labor required to implement each Requirement and component of the System (ranging from building tables to enhancing software code), and provide Agency with a detailed understanding of how the System must be configured and integrated to meet System and Services Requirements included in this contract. The Fit/Gap Analysis must identify implementation and enhancement options and identify the proper sequencing of activities. The specifications must address all the data, functional, interface, and technical Requirements included in this Contract at a detailed level sufficient to document how the System will function from both a technical and a user perspective. The Fit/Gap Analysis will provide the basis for Agency decision-making regarding each Requirement, and the subsequent implementation activities.

a. Contractor shall update progress and documentation in Weekly Status Reports, and deliver the final Fit/Gap Analysis as part of Deliverable 4, Implementation Artifacts. Contractor shall submit a written narrative report and proposed updates to the Project Implementation Plan as part of a Weekly Status Report that summarizes Contractor's recommended plan for the successful prototyping and implementation of the System, including Agency resources necessary.

b. The Fit/Gap Analysis must, at a minimum, address the following:
   A. Functional and data Requirements met without software modification
   B. Functional and data Requirements met by loading tables with ODE data
   C. Requirements met by modifying the software with user tools
   D. User view specifications
   E. Requirements met by modifying core parts of the System
   F. Hardware, network, and communication specifications for the System
   G. Interface specifications
   H. System testing specifications
   I. Documentation specifications
   J. Conversion specifications System maintenance, System administration, and production specifications
   K. Agency and ESD implementation staff training requirements; technical and user documentation
   L. Agency implementation labor requirements by activity and skill type
   M. Post-implementation requirements
   N. Contractor staffing requirements by detailed task
   O. All Agency resources required for System prototyping, development, and implementation

c. Before starting the Fit/Gap Analysis activities, Contractor shall train ODE staff in the design and use of the System's software.

d. Contractor shall deliver draft Fit/Gap Analysis Documentation to Agency sufficient for Agency to issue a Notice to Proceed for Step II as part of the Fit/Gap Analysis activities.

A.15.3 Step II – System Prototyping and Customization

1. **Prototype Development.** Contractor shall begin this Prototype Development Task upon receipt of a notice to proceed for Step II from Agency. Contractor shall complete Prototype Development activities in accordance with the current accepted Project Implementation Plan, the Agency-accepted narrative description of Contractor's recommended approach for Step II as described in Section 5.2.9 and 5.2. of Exhibit N, and the current Agency-accepted Fit/Gap Analysis Documentation. Prototyping will be done on a subject-area by subject-area basis, and may require Contractor to update the Project Implementation Plan and Fit/Gap Analysis Documentation. Contractor shall deliver a complete, updated Fit/Gap Analysis and an Application Design Document at the conclusion of Step III as part of Deliverable 4, Implementation Artifacts. The Application Design Document must detail the System specifications as successfully tested by Agency.

Contractor's Prototype Development Task activities shall include at a minimum:

a. Modification and configuration of System software to meet Requirements.

b. Deployment of an automated tool to support future additions, deletions, and changes to the item bank.

c. Demonstrations (at least monthly) to Agency staff for review and training purposes. Training may be delivered at Agency in-person or via webcast as required to ensure clear communication.

d. Testing of configured System components and functionality by Agency-designated users.

e. Testing of the complete System Prototype by Agency-designated users, including end-to-end testing for user scenarios spanning multiple applications; integration testing; performance testing; and retesting (if needed). This includes providing customer service and defect resolution in accordance with the Service Level Agreement (Exhibit J).
   A. Contractor shall conduct System Prototype pilot testing in accordance with a specific Agency notice to proceed, and in accordance with Agency-accepted pilot testing activities. Pilot testing activities may be described in Deliverable 1, or in a separate plan specific to pilot testing activities.

f. Making any changes required in response to System review by the US Department of Education.

A.15.4 Step III - System Implementation

1. Contractor shall begin this System Implementation Task upon receipt of a written notice to proceed for Step III from Agency. Contractor shall complete System Implementation activities in accordance with the current accepted Project Implementation Plan, and accepted Deliverables from Step II. System Implementation work may require Contractor to update the Project Implementation Plan and Step II Deliverables. At the conclusion of Step III, Contractor shall deliver all remaining Implementation Artifacts (Deliverable 4) and any updated prior delivered Implementation Artifacts, and submit the System for Final Acceptance testing.

Contractor's System Implementation activities shall include at a minimum:

a. System hosting and availability– Contractor shall install all System and related supporting software on all hardware used to deliver the System, and ensure the System is available to Agency and Agency-designated users. Installation includes all activities to ensure a functional System that meets Requirements for all Agency users. Individual school districts will be responsible for installation of software and hardware at the school level.

b. External Interfaces Development -- Contractor shall develop external interfaces for each System component identified in the Contract or relevant Deliverables. External interfaces must meet the technical requirements identified in this Contract.

c. Quality Assurance Testing -- Contractor shall manage all System quality assurance activities described in this Contract and coordinate with any Agency-designated third party Quality Assurance contractor. This includes providing customer service and defect resolution in accordance with the Service Level Agreement and Exhibit N, Section 5.2.9, subsection 3.12.4. Contractor shall provide quality assurance documentation for the System, including but not limited to:
   A. Record level locking to ensure data integrity
   B. Facility and timeline for systematic archival process, recovery, and restart procedures for the System, including indices, pointers and tables, to a status prior to any System-wide failure.

C. Change management (System development and user accessible content).
D. Support for workstations using operating Systems identified in contract.
E. Process for load testing, quality control and quality assurance for test design, test administration, scoring, and reporting.

d. Data Conversion – If necessary, Contractor shall complete the data conversion activities described in this Contract in migrating Agency's existing items from Agency's current item bank.

e. Training – Contractor shall develop and deliver a training plan and materials as Deliverable 6, Training Materials, and provide training in accordance with the accepted Deliverable. Contractor shall deliver Deliverable 6 at least 60 calendar days prior to Go-Live, and redeliver this Deliverable annually.
   A. Training during Stage II will include initial training on the use of each System component and supply materials to support on-going training consistent with the requirements described in this Contract. Contractor shall provide user and technical training to the variety of groups described in this Contract.

   B. Contractor shall deliver Deliverable 6 at least 60 calendar days prior to Go-Live, and redeliver this Deliverable annually.

f. Maintenance and Operations Documentation – Contractor shall develop a complete and comprehensive set of user and System documentation as Deliverables that reflect all aspects of the System and Services required in the Contract. These Deliverables must be current at Final Acceptance and maintained by Contractor throughout the life of this Contract. The documentation must be provided to Agency in electronic word-processing format. Agency's preferred word-processing format is Microsoft Word. Contractor shall provide the documentation in this format or provide the ability to convert to the Word format. Contractor shall develop and deliver the following Deliverables at least 60 calendar days prior to Go-Live, and redeliver these Deliverables annually:
   A. Support Services Guide (Deliverable 5), This Deliverable must meet and be maintained in accordance with Requirements, and meet all other Contractual requirements, including Performance Warranties (Section 8.2 of the Contract).
   B. Training Materials (Deliverable 6), This Deliverable must meet and be maintained in accordance with Requirements, and meet all other Contractual requirements, including Performance Warranties (Section 8.2 of the Contract).
   C. Hosting and Security Guide (Deliverable 7) This Deliverable must meet and be maintained in accordance with Requirements, and meet all other Contractual requirements, including Performance Warranties (Section 8.2 of the Contract)..

g. Supporting acceptance testing activities, including end-to-end testing for user scenarios spanning multiple applications; integration testing; performance testing; and retesting (if needed), in accordance with the testing activities described in Exhibit N, Section 5.2.9 , and providing customer service and defect resolution in accordance with Exhibit J, Service Level Agreement.

h. Implement the System in accordance with an Agency notice to proceed, and in accordance with Agency-accepted Implementation activities. Implementation activities may be described in Deliverable 1, or in a separate plan specific to Go-Live activities.

i. Develop and deliver Deliverable 4, Project Implementation Artifacts. This Deliverable must include at least:
   A. The final Fit/Gap Analysis;
   B. The final Application Design Document;
   C. If System Prototype testing is completed under an pilot-specific plan (rather than as part of Deliverable 1), the final System Prototype Pilot Testing plan, test results, and changes documentation;
   D. System Test results;

E. User Acceptance Test results; and

F. Final versions of Contractor's planning documents, tracking documents, and specification documents described in Exhibit N, Section 5.2.6 (pages 15-27 within that section).

A.15.5 Step IV - Post-Implementation Support- Maintenance and Operations

1. Contractor shall perform Maintenance and Operations services for the System that meets requirements, in accordance with current, accepted Maintenance and Operations Deliverables and Exhibit J, Service Level Agreement. Contractor's Maintenance and Operations Services shall include at a minimum:

    a. Application management, Help Desk support, Systems enhancements, Systems maintenance, adaptive and preventive maintenance, performance maintenance, and documentation updates, as described in Exhibit N, Section 5.2.9;

    b. Staffing and Project Management Services described in this Contract , including this Exhibit A and Exhibit N, Sections 5.2.6 and 5.2.9; and

    c. System performance and Service Level Agreement monitoring, measuring, and reporting. Contractor shall develop and deliver Monthly Usage Reports (Deliverable 8), which must include at least:
        A. Documentation of Maintenance and Operations activities, including ongoing Services and System updates.
        B. A "dashboard" tool of commonly used project management measures;
        C. Notes or other documentation of meetings held by the parties; and
        D. The performance metrics referenced in Section A.16.1.1.

    d. Maintenance of access to the online document management system, currently KnowledgeTree, for Agency-designated staff to view real-time status of Maintenance and Operations activities;

    e. Contractor shall make available to Agency options offered to other clients without incurring an additional charge beyond that which is necessary to integrate the enhancement into the System. Such changes will be implemented in accordance with a fully executed, written amendment to this Contract.

    f. Business Continuity Plan - Contractor shall ensure the System is protected against natural disasters, hardware and software failures, human error, and other contingencies that could interrupt services. Contractor shall maintain a Business Continuity Plan (BCP) (Deliverable 9) that includes a Disaster Recovery (DR) Plan. Contractor shall develop and submit, within ninety (90) days of the Effective Date, a BCP providing descriptions and high level plans for the implementation and operations of the BCP base system infrastructure, staff support resources, and physical location plan including a description of the Services capabilities the DR solution addresses. Contractor shall maintain the plan throughout the life of the Contract. The BCP will describe a load balanced active replica BCP, and will address recovery of business functions, business units, business processes, human resources, and the technology infrastructure sufficient to demonstrate that the System is protected against natural disasters, hardware and software failures, human error, and other events that could interrupt services.

    g. Contractor's failure to complete essential tasks and processes both correctly and on time may result in Agency assessing liquidated damages against Contractor. ODE retains the right to reduce a payment due Contractor by the amount of liquidated damages assessed, or in the sole discretion of ODE, accept System enhancement Services equivalent to the value of the liquidated damages due to ODE.

A.16. Selective Elements

In addition, the following selective elements remain within scope of the Contract. The Agency will make a decision in the future related to the following. At that time Contractor and Agency will negotiate the cost for adding these services:

1. Develop new item types and author new items.
2. Support printing and distribution for the Kindergarten Assessment (worded as "Administer Kindergarten Readiness Assessment" in the original proposal).
3. Administer Oregon's Alternate Assessments (grades 3 – 8 and High School)
4. Develop and administer diagnostic assessment tools for OAKS Science, Social Sciences, and ELPA
5. Administer diagnostic assessment tools for Smarter ELA and Mathematics Assessments
6. Include Learning Point Navigator application in the system, to be populated with interim and formative items for Science, Social Sciences, and the ELPA, as well as formative items for Smarter.
7. Populate the LPN with Smarter interim items.
8. Provide scoring through artificial intelligence for constructed response item types
9. Provide reports providing students with feedback based on results for diagnostic assessment tools
10. Provide forensic data reports to assist districts and schools with detecting possible testing improprieties.
11. Artificial Intelligence scoring

A.17 MILESTONES AND DELIVERABLES SCHEDULE

The schedule for project development activities is listed below.

Milestones & Due Dates	Scheduled Date*
Contract Begins	April 8, 2014
Deliverable 1, Project Implementation Plan	April 30, 2014
Deliverable 3, Weekly Status Reports, commence	April 30, 2014
Deliverable 2, Requirements Validation Report	May 15, 2014
Contractor develops prototype of the System	May 30, 2014
All ODE test items (IMS QTI compatible with some APIP flags) to Contractor for input into the System for pilot testing	June 15, 2014
Deliverable 9, Business Continuity Plan	July 15, 2014
Pilot testing of System Prototype components (limited district participation)	July 1-31, 2014
Evaluation of System Prototype testing including differential item functioning	July 1-31, 2014
Contractor revises System based on pilot results	August 1-31, 2014
Finalization of user guides and training materials	September 1-30, 2014
Deliverable 6, Training Deliverables	Per accepted Deliverable 1
Deliverable 5, Support Services Guide	Per accepted Deliverable 1
Deliverable 7, Hosting and Security Guide	Per accepted Deliverable 1
Professional development and training for ESD and district staff	October 1 – November 30, 2014
Final Acceptance Date	December 15, 2014
Go-Live	January 1, 2015
Operational testing begins	January 10, 2015 and ongoing
Deliverable 8, Monthly Reports, commence	Per accepted Deliverable 1
Report assessment results and integrate data with Agency's accountability Systems	January 10-31, 2015 and ongoing

*Dates may be modified upon Agency written approval from Agency Contract Administrator

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Part B
Assessment Program Description

B.3.1. SMARTER BALANCED ASSESSMENT SYSTEM COMPONENTS

The System must comply with the requirements of the Smarter Balanced Assessment Consortium as follows:

a. Architecture and Technology Report. This report provides a comprehensive understanding and defines enterprise architecture of the Smarter Balanced Assessment System it also provides framework to guide the application architects. http://www.smarterbalanced.org/wordpress/wp-content/uploads/2012/03/SmarterBalanced_ArchitectureReport_120321.pdf

b. Governance Plan. This plan explains the intent of the Smarter IT System's architecture and how it plans to meet the assessment obligation in October 2014. http://www.smarterbalanced.org/wordpress/wp-content/uploads/2011/12/Enterprise-Architecture-Governance-Plan-Phase-1-Report.pdf

c. Workshop Deliverables. This document describes the outcomes of three workshops which included Scoring, Distributed Scoring, Reporting and Portals/Dashboards, Item Authoring, Item Banking, Digital Library and Interoperability, Test Creation, Test Delivery Platform, Adaptive Testing and Integration Framework. http://www.smarterbalanced.org/wordpress/wp-content/uploads/2012/02/Smarter_IT-Systems_WorkshopDeliverables_120120.pdf

B.3.2. ASSESSMENT PROGRAM

Contractor shall deliver the Assessment Program described

Assessments in Oregon's 2014-15 Statewide Assessment System

Subjects	Included Item Types (both Technology Enhanced & Enabled)	Supported Languages	Student Population
English Language Proficiency Assessment (ELPA)	Selected response Constructed response (both written and spoken responses)	*English*	English language learners
OAKS Science	Selected response Constructed response	English	English proficient
		Spanish/English	English language learners
OAKS Social Sciences	Selected response Constructed response	English	English proficient
		Spanish/English	English language learners
Smarter English Language Arts / Literacy	Selected response Constructed response Performance tasks	English	English proficient

Subjects	Included Item Types (both Technology Enhanced & Enabled)	Supported Languages	Student Population
		TBD	English language learners
Smarter Mathematics	Selected response Constructed response Performance tasks	English	English proficient
		TBD	English language learners

Below is a description of each assessment that, at a minimum, must be provided by the Contractor.

B.3.2.1 Oregon English Language Proficiency Assessment (ELPA): The Oregon English Language Proficiency Assessment (ELPA) is administered to all students eligible to receive ELL Services and is offered by the following grade-bands: K-1, 2-3, 4-5, 6-8, and high school (grades 9 – 12). The ELPA is designed to assess students' English proficiency in the domains of reading, writing, listening, and speaking. As it is an assessment of English language proficiency, it is offered only in English. The specific item types included in the ELPA vary by grade-band, but generally, the ELPA consists of a combination of selected response and constructed response (including both written and spoken responses). Also depending on grade-band, each student receives approximately 48 – 56 items. ELPA test specifications and blueprints are available online at http://www.ode.state.or.us/search/page/?id=496.

B.3.2.2 OAKS Science - The OAKS Science assessment is administered to students in grades 5, 8, and high school and is offered in both English and stacked Spanish/English. The OAKS Science assessment consists primarily of multiple-choice items with some technology enhanced constructed response items. Each student receives approximately 45 items. The OAKS Science test specifications and blueprints are available online at http://www.ode.state.or.us/search/page/?=496.

The OAKS Science test specifications reflect the skill expectations outlined in the science content standards, which were adopted in February 2009 by the Oregon State Board of Education. These standards were developed in part to correlate with the knowledge and skills assessed on science standards on the National Assessment of Educational Progress (NAEP) and align with the National Science Standards. The OAKS Science assessment is designed to assess literacy skills overall and in the following score reporting categories (SRCs):

- **Structure and Function (SRC 1):** Understand living and non-living things have characteristics, form and function, and are composed of components that function together to form systems.
- **Interaction and Change (SRC 2):** Understand components in a system can interact in dynamic ways, within or without that system, and may result in change.
- **Physical Science (SRC 5):** Understand structures and properties of matter, forms of energy, and changes that occur in the physical world.
- **Life Science (SRC 6):** Understand structures, functions, and interactions of living organisms and the environment.
- **Earth and Space Science (SRC 7):** Understand physical properties of the Earth and how those properties change. Understand Earth's relationship to other objects in the Universe.
- **Scientific Inquiry and Engineering Design (SRC 8):** Understand science process concepts and skills that characterize the nature and practice of science. Scientific Inquiry (SRC 3) is a systematic process that includes proposing testable hypotheses, collecting, analyzing, and interpreting data to produce evidence-based explanations and new explorations. Engineering Design (SRC 4) is a process of formulating problem statements, identifying criteria and constraints, testing solutions, and incorporating modifications based on test data and communicating the recommendations.

B.3.2.3 OAKS Social Science - The OAKS Social Sciences assessment is an optional assessment administered to students in grades 5, 8, and high school and is offered in both English and stacked Spanish/English. The OAKS Social Sciences assessment consists primarily of selected response items but also includes some technology enhanced constructed response items. Each student receives approximately 50 items. The OAKS Social Sciences test specifications and blueprints are available online at http://www.ode.state.or.us/search/page/?=496.

The OAKS Social Sciences assessment is designed to assess student proficiency across the following SRCs:
- **History**
  - **Historical skills:** Design and implement strategies to analyze issues, explain perspectives, and resolve issues using the social sciences.
  - **U.S. History:** Understand the importance and lasting influence of issues, events, people, and developments in U. S. history. Relate significant events and eras in United States history to past and present issues and developments.
  - **World history:** Understand the importance and lasting influence of significant eras, cultures, issues, events, and developments in world history. Relate significant events and eras in world history to past and present issues and developments.(Not assessed at grade 5)
- **Civics and government:** Understand and apply knowledge about governmental and political systems and the rights and responsibilities of citizens.
- **Economics:** Understand economic concepts and principles and how available resources are allocated in a market economy.
- **Geography:** Understand and use geographic skills and concepts to interpret contemporary and historical issues.

B.3.2.4 SMARTER BALANCED ASSESSMENT CONSORTIUM'S ENGLISH / LANGUAGE ARTS ASSESSMENT - The Smarter English Language Arts assessment will be administered to students in grades 3 – 8 and in high school and will be offered in both English and translated languages which will be determined by Agency. Smarter will use a variety of item types to assess student English language arts and literacy proficiency, including selected response, constructed response, technology enhanced, and performance tasks. While the Smarter English Language Arts test specifications are still under development, the Smarter English Language Arts content specifications are available online at http://www.smarterbalanced.org/wordpress/wp-content/uploads/2011/12/ELA-Literacy-Content-Specifications.pdf.

The Smarter English Language Arts assessment will be designed to assess student proficiency with the CCSS across the following claims:
- Students can **read** closely and analytically to comprehend a range of increasingly complex literary and informational texts.
- Students can produce effective and well-grounded **writing** for a range of purposes and audiences.
- Students can employ effective **speaking and listening** skills for a range of purposes and audiences.
- Students can engage in **research** / inquiry to investigate topics, and to analyze, integrate, and present information.

B.3.2.5 SMARTER BALANCED ASSESSMENT CONSORTIUM'S MATHEMATICS ASSESSMENT - The Smarter Mathematics assessment will be administered to students in grades 3 – 8 and in high school and will be offered in both English and translated languages which will be determined by Agency. Smarter will use a variety of item types to assess student mathematical proficiency, including selected response, constructed response, technology enhanced, and performance tasks. While the Smarter Mathematics test specifications are still under development, the Smarter Mathematics content specifications are available online at http://www.smarterbalanced.org/wordpress/wp-content/uploads/2011/12/Math-Content-Specifications.pdf.

The Smarter Mathematics assessment is designed to assess student proficiency with the CCSS across the following claims:

- o **Concepts and Procedures:** Students can explain and apply mathematical concepts and interpret and carry out mathematical procedures with precision and fluency.
- o **Problem Solving:** Students can solve a range of complex well-posed problems in pure and applied mathematics, making productive use of knowledge and problem solving strategies.
- o **Communicating Reasoning:** Students can clearly and precisely construct viable arguments to support their own reasoning and to critique the reasoning of others.
- o **Modeling and Data Analysis:** Students can analyze complex, real-world scenarios and can construct and use mathematical models to interpret and solve problems.

B.3.3 TEST DESIGN AND SCHEDULE

The development of item types that appear on the Oregon assessments and the Smarter common assessments considers the access needs of the vast majority of students (e.g., cognitive, processing, sensory, physical, language). Each of the item types incorporate accessibility features (e.g., magnification, text-to-speech, and Braille) that must be supported by the System.

B.3.3.1 Accessibility
To support testing for all students, ODE offers a variety of accommodations and accessibility features. Assessment accommodations approved by Oregon's Accommodations Panel are identified in Oregon's Accommodations Manual, available online at http://www.ode.state.or.us/search/page/?=487. The System must support at least the accessibility features identified in table below. Each accessibility feature must be configurable so district- or school-level users can assign specific features to individual students by subject area.

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Accessibility Features	
Spoken (Read Aloud) Presentation	Tool allows text-based content to be presented in a spoken form via computer-based text-to-speech. This feature must be configurable by subject and content (e.g., directions, stimuli, test item).
Magnifier:	Tool which magnifies a selected portion of an item.
Increased Font Size:	A tool allowing students to increase the size of alphanumeric content.
Magnification Interface	An option which enlarges the item content and all of the control and navigation features of a test delivery interface.
Braille:	Real-time presentation of test content in Braille via a refreshable Braille display and a Braille embosser.
Reverse Contrast	An option reversing the colors used to display text and graphics and the background on which text and graphics are displayed.
Fore and Background Colors:	An option changing the color used to display text and graphics and the color used for the background on which text and graphics are displayed.
Color Overlay:	Option which places a colored tint over all text and graphics.
Increased White Space:	An option allowing more white space to be displayed between lines of text based content.
Signed Representation:	An option which allows video Sign Language interpretation of text. This feature must be configurable by subject and content (e.g., directions, stimuli, test item).
Translation:	Option allowing a student to view native language translation of directions. This feature must be configurable by subject and content (e.g., directions, stimuli, test item). Translations will be provided by ODE or its delegate.
Keyword Translation:	Word-to-word translation of words that have been identified by ODE or its delegate as key to understanding what an item or task is prompting a student to do.
Glossary:	A tool allowing students to find glosses (synonyms) for words in an item or passage NOT identified by ODE or its delegate as essential to the construct measured by the item. This option does not provide access to definitions of words.
Keyword Value Glosses:	Glosses, or synonyms, for individual words as they are used in the context of the item. Glosses provide one or more synonyms but do not provide formal definitions for a keyword term. Note: determination of applicable keywords will be made by ODE or its delegates.
Tab-Enter Navigation:	Ability which allows a student to navigate and interact with the test delivery system using the Tab and Enter keys and/or the equivalent on an alternate keyboard or assistive communication device. Note the device must be provided to the student.
Calculator:	A calculator built into the delivery component This feature must be configurable by subject and item.
Embedded reference tools:	Reference tools (e.g., periodic table) embedded in the student interface of the test delivery component. This feature must be configurable by subject.
Highlighter:	Tool allowing a student to select text to be highlighted.
Answer Eliminator:	A tool allowing students to strike out answer questions they have eliminated as a possible correct answer.
Guided Line Reader:	A tool which provides focus on a single line of text and which can be moved up or down within a block of text.
Masking:	A tool that blocks a portion of the display area in order to provide focus on the un-masked area.
Speech/Text Device:	An option allowing students to respond to test items using their voice to speak into a speech to text device.
Word Prediction:	A tool that assists with the recording of text by predicting a word based on the initial characters entered.
Auditory Calming:	A tool that plays music or white noise in the background.

B.3.3.2 English Language Learners

English Language Learners (ELLs) are given equal opportunity to participate in the assessment program. Any ELL student may take a standard administration with or without accommodations. Assessment options for ELL students are described in Part VII – English Language Learners of the Oregon Test Administration Manual, available online at http://www.ode.state.or.us/go/tam. The System must support at a minimum the elements for ELL students described in the Oregon Test Administration Manual.

B.3.3.3 Students with Disabilities

Both the Individuals with Disabilities Act of 2004 (IDEA) and OAR 581-022-0612: Exception of Students with Disabilities from State Assessment Testing require individuals with disabilities be given equal opportunity to participate in and benefit from any program or activity customarily granted to all individuals with appropriate adaptations. All students with disabilities are eligible to participate in Oregon's statewide assessment System, with or without accommodations. Assessment options for students with disabilities supported through ODE's current assessment System are described in Part VIII – Students with Disabilities of the Oregon Test Administration Manual, available online at http://www.ode.state.or.us/go/tam. The System must support at a minimum the elements for students with disabilities described in the Oregon Test Administration Manual.

B.3.3.4 Number of Students Tested

Table below lists the number of students by grade and subject anticipated to test in 2014-15.

Anticipated Number of Students Testing by Grade and Subject

Assessment	Assessed Grades						
	K-1		2-3	4-5	6-8		HS
ELPA	16,000		14,000	11,000	8,000		7,000
	3	4	5	6	7	8	HS
OAKS Science	n/a	n/a	40,000	n/a	n/a	40,000	120,000
OAKS Social Sciences	n/a	n/a	20,000	n/a	n/a	20,000	90,000
Smarter Mathematics*	40,000	40,000	40,000	40,000	40,000	40,000	60,000
Smarter English Language Arts/Literacy*	40,000	40,000	40,000	40,000	40,000	40,000	60,000

B.3.3.5 Testing Opportunities and Windows

The System must support multiple testing opportunities and staggered test schedules throughout the year.

Number of Testing Opportunities

Assessment	Assessed Grades						
	K-1		2-3	4-5	6-8		HS
ELPA	1		1	1	1		1*
	3	4	5	6	7	8	HS
OAKS Science	N/A	N/A	2	N/A	N/A	2	3*
OAKS Social Sciences	N/A	N/A	2	N/A	N/A	2	2*
Smarter Mathematics**	1	1	1	1	1	1	1***
Smarter English Language Arts/Literacy	1	1	1	1	1	1	1***

The System must mask items within an item bank to ensure an individual student would not be presented with the same test item(s) across multiple testing opportunities; for high school, this includes both testing opportunities within and between test windows; for ELPA, this includes test opportunities between grades within a grade-band. Table below lists the number of operational items currently available by subject and grade.

Number of Operational Items

Assessment	Assessed Grades						
	K-1		2-3		4-5	6-8	HS
ELPA	338		385		322	329	331
	3	4	5	6	7	8	HS
OAKS Science	n/a	n/a	2,413	n/a	n/a	2,580	2,164
OAKS Social Sciences	n/a	n/a	4,683	n/a	n/a	1,116	797
Smarter Mathematics	9,000	9,000	9,000	9,000	9,000	9,000	9,000
Smarter English Language Arts/Literacy*	9,000	9,000	9,000	9,000	9,000	9,000	9,000

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Exhibit A
Statement of Work

Part C
Special Provisions

1. Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and Agency procedure "Contractual Governance," Agency determination is the Contractor is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Contract: **CFDA number 84.369.**

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REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit B prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

1.   Workers' Compensation. as defined by ORS 656.027.
All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure each of its subcontractors complies with these requirements.

2. PROFESSIONAL LIABILITY

Professional Liability Insurance Contractor shall obtain and maintain at its own expenses for the duration of this Contract Professional Liability Insurance with a combined single limit, or the equivalent, as set forth below. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Full limits can be obtained by the purchase of one primary policy or a primary and excess policy as needed to provide the full policy limits. Such policy must include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Network Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage must insure damage caused by error, omission, or negligent acts, including all prior acts related to the professional services to be provided under this Contract. The Policy must be amended to include Independent Contractors providing Professional Services on behalf of or at the direction of Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Per occurrence limit for any single claimant:
From commencement of this Contract term to June 30, 2014: $1,900,000.
                                    July 1, 2014 to June 30, 2015: $2,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:
From commencement of this Contract term to June 30, 2014: $3,800,000.
                                    July 1, 2014 to June 30, 2015: $4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

3. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance must include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

Per occurrence limit for any single claimant;

From commencement of this Contract term to June 30, 2014: $1,900,000.

July 1, 2014 to June 30, 2015: $2,000,000.

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

Per occurrence limit for multiple claimants:

From commencement of this Contract term to June 30, 2014: $3,800,000.

July 1, 2014 to June 30, 2015: $4,000,000.

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

AND Property Damage:

Per occurrence limit for any single claimant:

From commencement of this Contract term to June 30, 2014: $106,700,

and

Per occurrence limit for multiple claimants:

From commencement of this Contract term to June 30, 2014: $533,400.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

3. AUTOMOBILE LIABILITY

Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

Per occurrence limit for any single claimant:

From commencement of this Contract term to June 30, 2014: $1,900,000.

July 1, 2014 to June 30, 2015: $2,000,000.

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

Per occurrence limit for multiple claimants:

From commencement of this Contract term to June 30, 2014: $3,800,000.

July 1, 2014 to June 30, 2015: $4,000,000.

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

AND

Property Damage

Per occurrence limit for any single claimant:

From commencement of this Contract term to June 30, 2014: $106,700.

and

Per occurrence limit for multiple claimants:

From commencement of this Contract term to June 30, 2014: $533,400.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

4. EXCESS/UMBRELLA INSURANCE. A combination of primary and excess/umbrella insurance is acceptable. If you are using excess/umbrella insurance to meet the minimum insurance requirement, your certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

5. "Tail" Coverage. If any of the required liability insurance is on a "claims made" basis, Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of twenty-four (24) months following the later of: **i.** Contractor's completion and Agency's acceptance of all Services required under this Contract, or, **ii.** The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this Exhibit B, Section 5.

6. Notice of Cancellation or Change.   There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Oregon Department of Education.

7. Certificate(s) of Insurance. Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any. Contractor shall furnish acceptable insurance certificates to: **Oregon Department of Education. Attn: Lisa Monique Murphy, 255 Capitol St NE, Salem OR 97310** prior to commencing the work.

8. Additional Insured.   The Commercial General Liability and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

EXHIBIT C
CONTRACTOR DATA AND TAX CERTIFICATION

1.   Contractor shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0333(5).

1.1   Contractor Data and Insurance Information. Please print or type the following information:

Name American Institutes for Research in the Behavioral Sciences
(exactly as filed with IRS)

Address 1000 Thomas Jefferson Street, NW Washington, DC 20007-3835

E-mail address tjesulaitis@air.org

Telephone: 202-403-5031   Facsimile: 202-403-5414

DUNS Number: 04-173-3197

Nonresident alien [ ] YES   [x] NO

Proof of Insurance:

Workers Compensation Insurance Company Policy #   Expiration Date:

Professional Liability Insurance Company Policy #   Expiration Date:

General Liability Insurance Company Policy #   Expiration Date:

Auto Insurance Company Policy #   Expiration Date:

Business Designation:

[x] Professional Corporation   [ ] Partnership   [ ] Limited Partnership
[ ] Limited Liability Company [ ] Corporation [ ] Sole Proprietorship

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1.2   The above information must be provided prior to Contract execution. Contractor shall provide proof of insurance upon request by Agency or Agency designee.

2.   Certification. By signature on this Contract, the individual signing on behalf of Contractor hereby certifies and sears under penalty of perjury to the best of the individual's knowledge that:

2.1   The information shown in Contractor Data and Certification above is Contractor's true, accurate and correct information;

2.2   Contractor is not subject to backup withholding because:

    2.2.1   Contractor is exempt from backup withholding;

    2.2.2   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

    2.2.3   The IRS has notified Contractor that Contractor is no longer subject to backup withholding.

2.3   The individual signing on behalf of Contractor is authorized to act on behalf of Contractor, has authority and knowledge regarding Contractor's payment of taxes, and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws, including without limitation the following pursuant to OAR 150-305.385()-(B): For purposes of this certificate, 'Oregon tax laws' means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax);

2.4   Contractor is an independent contractor as defined in ORS 670.600.

3.   Contractor is required to provide its Federal Employer Identification Number (FEIN) or Social Security Number (SSN), as applicable, to Agency. By Contractor's signature on this Contract, Contractor hereby certifies that the FEIN or SSN provided is true and accurate. If this information changes, Contractor is also required to provide Agency with the new FEIN or SSN within 10 calendar days.

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EXHIBIT D

INDEPENDENT CONTRACTOR CERTIFICATION

(An Independent Contractor Certification is required, regardless of corporate status.)

1. I am free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;

2. I am licensed under ORS Chapters 671 or 701 to provide the services, if such license is required under ORS Chapters 671 or 701.

3. I am responsible for obtaining other licenses or certificates necessary to provide the services.

4. I am customarily engaged in an independently established business because **three (3)** of the following requirements are satisfied: *(Contractor to mark those which apply)*

_____**A.** I maintain a business location:
      1) which is separate from the business or work location of the person for whom the services are provided; **or**
      2) is in a portion of my residence, and that portion is used primarily for business.

_____**B.** I bear the risk of loss related to the business or the provision of services as shown by factors such as:
      1) Entering into a fixed-price contract;
      2) Being required to correct defective work;
      3) Warranting the services provided; or
      4) Negotiating indemnification agreements, or purchasing indemnification liability insurance, performance bonds or errors and omissions insurance.
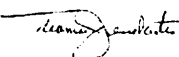
_____**C.** I provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

_____**D.** I make a significant investment in the business, through means such as:
      1) Purchasing tools or equipment necessary to provide the services;
      2) Paying for the premises or facilities where the services are provided; or
      3) Paying for licenses, certificates or specialized training required to provide the services.

_____**E.** I have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

CONTRACTOR

By:	Title:	Director, Contracts & Grants
Printed Signature: Thomas Jesulaitis	Date:	04/04/2014

EXHIBIT E
CONTRACTOR PERSONNEL

Contact Persons

Authorized Representative:

Name	**Elizabeth Greenberg**
Title	State Program Director
Email	egreenberg@air.org
Telephone	202.403.5359
Mobile Telephone	
Address	1000 Thomas Jefferson Street, NW, Washington, DC 20007
Facsimile	

Project Manager:

Name	**Tsze Chan**
Title	Psychometrician
Email	tchan@air.org
Telephone	202.403.5334
Mobile Telephone	
Address	1000 Thomas Jefferson Street, NW, Washington, DC 20007
Facsimile	

Authorized Representative/Contract Administrator:

Name	Lillie Gray
Title	Director of Procurement Services
Email	Lillie.gray@state.or.us
Telephone	503-947-5647
Address	255 Capitol ST NE Salem OR 97310
Facsimile	503-378-5156

Project Director/Project Manager:

Name	**Holly Carter**
Title	Operations & Policy Analyst
Email	Holly.carter@state.or.us
Telephone	503-947-5739
Address	255 Capitol ST NE Salem OR 97310
Facsimile	503-378-51556

Other Key Persons:

Name	**Kathleen Vanderwall**
Title	Manager, Test Design and Implementation
Email	Kathleen.vanderwall@state.or.us
Telephone	503-947-5721
Address	255 Capitol Street, Sale, OR 97310
Facsimile	503-378-5156

SUBSCRIPTION AGREEMENT

Contractor's Subscription Agreement

This Subscription Agreement (the "Agreement") is made this **4th** day of **April, 2014**, by and between American Institutes for Research, a non-profit corporation incorporated under the laws of the Commonwealth of Pennsylvania, having a principal place of business at 1000 Thomas Jefferson Street, N.W., Washington, D.C. 20007 (hereinafter "Contractor") and the State of Oregon, acting by and through its Department of Education (hereinafter "Agency"). Contractor and Agency may be referred to individually as a "Party" and collectively as the "Parties". Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Contract (as such term is defined below).

WHEREAS, Contractor and Agency are parties to a contract dated as of **April 4, 2014**, (the "Contract");

WHEREAS, in connection with its work under the Contract, Contractor proposes to host and make available to Agency and other users designated by Agency, including, without limitation, parents, students, teachers, test administrators and other school, school district, Boards of Education and Department of Education officials (collectively, the "Agency Designees"), certain existing web-based software reporting, registration, item banking and test delivery systems as identified in Schedule A hereto (the "Systems");

WHEREAS, Agency desires to access and use, and for the Agency Designees to access and use, such Systems on the terms and conditions hereafter stated.

NOW, THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. GRANT OF ACCESS AND USE

a. Contractor will maintain and make available to Agency and Agency Designees, on the terms and conditions set forth herein, a web-based portal located at http://www.oaks.k12.or.us/default.html or such other web address as may be agreed to by Contractor and Agency that will enable Agency and Agency Designees to access and use the Systems (the "Platform"), as may be modified by Contractor from time to time, for the limited purposes set forth in the Contract.

b. Contractor will also make available for download on the Platform certain browsers that will enable certain Agency Designees to access and use certain Systems in a secure and controlled manner (the "Secure Browsers"). Any use of such Secure Browsers shall be in accordance with the terms and conditions contained in the end user license agreement that is posted on the Platform (the "EULA"). The Parties recognize that the applicability of the EULA is limited to the use of the Secure Browsers only and is not intended to extend to other activities under the Contract that does not involve such use.

c. The Systems, including any modifications thereto, are and shall at all times remain the sole property of Contractor and neither Agency nor any Agency Designee shall have any rights thereto or ownership interests therein except as may be expressly granted herein.

2. TERMS OF USE

Agency and the Agency Designees' access to and use of the Platform and the Systems shall be in accordance with the following terms and conditions:

a. Agency and the Agency Designees shall comply at all times with the requirements, procedures and prohibitions set forth in the manuals and user guides accepted by Agency and posted on the Platform as well as any terms of use applicable to any System or portion thereof;

b. Agency and the Agency Designees shall not permit any third party to access or use any System and shall notify Contractor immediately of any unauthorized use or disclosure;

c. Agency and the Agency Designees shall not alter, publish, copy, reverse assemble or engineer, or disassemble any System or any portion thereof, or create any derivative works or improvements of either;

d. Agency and the Agency Designees shall maintain the confidentiality of the Systems, not disclose, deliver, provide access to or otherwise make available the Systems or any copies or reproductions thereof to any third party and limit access thereto and use thereof only to authorized persons having a need to access and/or use such Systems;

e. Agency and the Agency Designees understand that the Systems are web-based systems and that each is responsible for obtaining the necessary equipment, software and connection or service to secure adequate access to the Internet and Contractor's Platform and the Systems;

f. Agency shall not use the Platform or any System in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

g. Agency shall inform Agency Designees that are not under the direction and control of Agency of the Terms of Use of the Platform and System, and cooperate with Contractor in investigating and resolving any violation of these Terms of Use by Agency Designees that are not under the direction and control of Agency.

3. TERM AND TERMINATION

The term of this Agreement and the license granted herein shall be commensurate with term of the Contract, unless terminated or restricted earlier in accordance with the provisions herein. Contractor may, upon written notice to Agency, suspend or terminate access to and/or use of the Platform or any System by any Agency Designee or purported Agency Designee that Contractor believes is accessing and/or using the System in an unlawful or fraudulent manner or is causing harm to or interference with the use of the Platform or System by others, including, without limitation, any attempts to "hack" the System and/or information contained therein, or is otherwise committing a material breach of this Agreement. In addition, Contractor may terminate this Agreement without any liability or further obligation to Agency upon thirty (30) days' prior written notice if Agency commits a material breach hereof and fails to cure such breach fully within said 30-day period, or immediately upon written notice if the breach is incapable of cure.

4. WARRANTIES

a. Contractor warrants that it is authorized to grant the license provided to Agency hereunder. EXCEPT AS STATED HEREIN AND IN SECTION 8 OF THE CONTRACT, CONTRACTOR MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, RESULTING FROM THE USE BY AGENCY OR ANY AGENCY DESIGNEE OF THE REPORTING SYSTEM, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS SOFTWARE LICENSE AGREEMENT, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

b. Agency warrants that (i) execution of this Agreement by Agency will not result in any violation or default of or conflict with any provision of any other agreement to which Agency is a party or to which it is bound, or of any law, judgment, decree, order or regulation of any governmental agency, or of any action or proceeding before any court or governmental agency; and (ii) it shall promptly notify Contractor in writing of any changes to any laws, judgments, decrees, orders or regulations of any governmental agency that would compel Agency to breach, or prevent Agency from performing, any of the terms and conditions of this Agreement, or prevent either Party from exercising its rights herein.

5. TITLE

a. All right, title to, and interest in the Platform and the Systems, including any modifications made by Contractor during the course of this Agreement or the Contract, and all copyrights, patents, trade secrets, trademarks, and other proprietary rights and information belonging to Contractor or relating to or embodied in the Systems, are now and shall remain or be vested in Contractor. Title shall not pass to Agency, the Agency Designees or any third party by virtue of this Agreement or by any act or omission of Contractor, Agency, an Agency Designee, or any third party. Agency agrees to take no action and to cause the Agency Designees to take no action adverse to the Contractor's title or intellectual property rights in the Reporting System.

b. Notwithstanding Agency's right to permit the Agency Designees to access and use the Systems, it is expressly understood and agreed that no Agency Designee shall be deemed to be a third party beneficiary hereunder or have any claim or cause of action under this Agreement against Contractor.

6. CONFIDENTIALITY; UNAUTHORIZED USE OR DISCLOSURE

a. Agency and the Agency Designees shall hold the Systems and the information contained therein in confidence as proprietary information, and shall not disclose the Systems (including methods or concepts utilized therein) or the information contained therein to any third party.

b. Agency and the Agency Designees are responsible for maintaining the confidentiality of any passwords and account information they may be issued in order to access and use the Systems and shall take all reasonable steps to safeguard such information and prevent unauthorized or fraudulent use. Contractor shall not be liable for damage resulting from any failure of Agency or an Agency Designee to comply with this Section 6.

c. Subject to Section 9.4 of the Contract, Agency will be responsible for any costs or damages arising from any third party claims that occur from Agency's or an Agency Designee's violation of this Agreement..

7. MAINTENANCE

Contractor shall be responsible for hosting and maintaining the Systems in accordance with the service levels set forth in the Service Level Agreement appended to the Contract as Exhibit J.

8. NOTICES

a. Unless otherwise stated, all notices required under this Agreement shall be in writing and shall be considered given: (i) when delivered personally, (ii) five (5) days after mailing, when sent certified mail, return receipt requested and postage prepaid, (iii) upon receipt when sent via a commercial overnight carrier, fees prepaid or, (iv) upon receipt when sent by facsimile transmission confirmed by telephone, with copy of transmission confirmation receipt retained.

b. All communications will be addressed as follows (unless changed by written notice):

To Contractor:	To Agency:
American Institutes for Research ATTN: Thomas Jesulaitis	Oregon Department of Education ATTN: Lillie Gray
1000 Thomas Jefferson Street, N.W. Washington, D.C. 20007	255 Capitol ST NE Salem OR 97338
Fax:	Fax: 503-378-5156
E-mail: tjesulaitis@air.org	Email: lillie.gray@state.or.us
With a copy to: Jon Cohen – jcohen@air.org	With a copy to: Holly Carter - holly.carter.@state.or.us

9.   MISCELLANEOUS
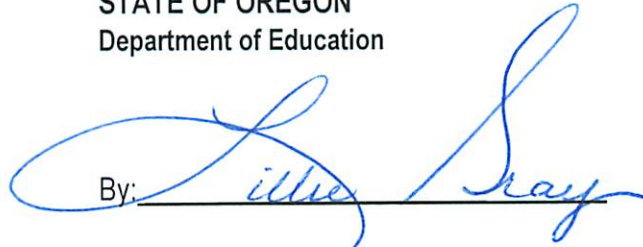
a.   Governing Law. This Agreement shall be governed by the laws of the State of Oregon, without regard to those laws as they relate to conflicts of laws.

b.   Survival. Any provision of this Agreement which contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

c.   Assignment. Neither this Agreement, the rights granted hereunder, nor the Reporting System may be, directly or indirectly, sold, transferred, sublicensed, assigned in whole or in part, conveyed, pledged, encumbered or otherwise disposed of by Agency or any Agency Designee without the prior written consent of Contractor, its successors, or assigns.

d.   Severability. If at any time any clause or part of this Agreement, is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intention of the Parties, and the remainder of the Agreement will continue in full force and effect.

e.   Amendment. No modification, amendment to or alteration of this Agreement, including, without limitation, any Schedules referred to herein and attached hereto, shall be effective unless such modification, amendment or alteration is reduced to writing, states the clear intent of the Parties to modify, amend or alter the specified provisions of this Agreement and is signed by both Parties and approved by DOJ, if DOJ approval is required by applicable law, except for a change of contact information provided by one Party to the other.

f.   Entire Agreement; Order of Precedence. This Agreement, together with all Schedules referenced herein and attached hereto, is the complete agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and communications (both written and oral) relating to such subject matter. In the event of an irreconcilable conflict between the provisions of this Agreement and the Contract, the provisions of the Contract shall prevail.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**AMERICAN INSTITUTES
FOR RESEARCH**

By:_____

Title: Director, Contracts & Grants
_____

Date: 04/04/2014
_____

**STATE OF OREGON
Department of Education**

By:_____

Title: _Director - Procurement Services_

Date: _April 4, 2014_

Approved for Legal Sufficiency: email – Ellen Price_____ on __April 4, 2014_____
                    Oregon Assistant Attorney General (Matter GF0606-12)

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Online Portal

The online portal located at http://www.oaks.k12.or.us/default.html provides a customized one-stop shop for educators and other stakeholders and provides access to the various Systems listed below as well as practice sites, training sites, tutorials, and other resources.

Test Information Distribution Engine (TIDE)

TIDE is responsible for registering students and other users (e.g. district and school personnel), gathering of demographic data and pre-determined test settings; and ordering of assessment materials.

Test Delivery System (TDS)

TDS delivers tests to students, records responses, and forwards data to downstream systems. The test administrator interface (TDS-TA) provides the interface through which test administrators establish and monitor testing sessions and authenticate student users. The student interface (TDS-S) provides the interface through which students take the tests. Every student is required to use a Secure Browser.

Online Reporting System (ORS)

ORS provides a secure interface to assessment data and associated demographic information. It provides educators with a powerful tool to explore the data and turn them into actionable information.

Learning Point Navigator (Navigator)

Navigator integrates with ORS to provide resources targeted to identified areas of weakness or to extend standards-aligned topics for students who are excelling. The system provides immediate access to standards-aligned professional development, lesson plans, and student activities. Both educators and students (and their parents) can access the system to obtain or use learning resources.

HandScoring

The HandScoring system stores data about hand scores for non-machine-scorable constructed-response items, such as English Language Proficiency Assessment (ELPA) speaking and writing items. Raters are required to use the Secure Browser.

Item Tracking System (ITS)

ITS serves as a content development and management tool, an item bank, and a publication system supporting both paper and online publications.

Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Contract, to Contractor, or to the Work, or to any combination of the foregoing. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. MISCELLANEOUS FEDERAL PROVISIONS

Contractor shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

2. EQUAL EMPLOYMENT OPPORTUNITY

If this Contract, including amendments, is for more than $10,000, then Contractor shall comply and require all subcontractors to 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).

3. CLEAN AIR, CLEAN WATER, EPA REGULATIONS

If this Contract, including amendments, exceeds $100,000 then Contractor shall comply and require all subcontractors to 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 (2 CFR Part 1532), 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 OHA, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require all subcontractors to include in all contracts with subcontractors receiving more than $100,000, language requiring the subcontractor to comply with the federal laws identified in this Section.

4. ENERGY EFFICIENCY

Contractor shall comply and require all subcontractors to 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).

5. TRUTH IN LOBBYING

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 of the 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.

6. RESOURCE CONSERVATION AND RECOVERY

Contractor shall comply and require 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 Part 247.

7. AUDITS

7.1 Contractor shall comply and, if applicable, require 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."

7.2 Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) Sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Non-profits, hospitals, colleges and universities must follow 2 CFR Part 215. Sub-recipients shall monitor any organization to which funds are passed for compliance with CFR and OMB requirements.

8. 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. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) 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.

9. DRUG-FREE WORKPLACE

Contractor shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor's workplace or while providing services to OHA clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days

after such conviction; (v) Notify OHA within 10 days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents or subcontractors may provide any service required under this contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of this Contract.

10. AGENCY-BASED VOTER REGISTRATION
Contractor shall comply with the Agency-based Voter Registration Sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

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EXHIBIT I
Reserved.

The following table describes remediation plan for service level failures:

	Service Level	Metric	Liquidated Damages
1	During the **Official Testing Window (OTW)**, confirmed reports of systematic latency in the System or one of its components caused by (i) Contractor hardware or any third party hardware utilized by Contractor to perform services under this contract; or (ii) Contractor Internet service or provider or network Contractor utilizes to perform services under this contract; or (iii) any Proposer software or third party software Contractor utilizes to perform services under this contract. Contractor shall not be liable for systematic latency caused by a Force Majeure event as defined in this Contract, including latencies caused by an internet service provider not under contract with Contractor for the provision of Service.	At least 5 school districts must report a degree of latency resulting in any students in affected districts being unable to complete the test within one (1) day of the test initiation. Contractor and ODE shall determine a mutually agreeable investigative method for this metric.	$15,000 per day until problem is rectified
2	Post Final Acceptance, where an error is not attributable to the content of the items or graphics as approved by ODE for use, during OTW, Contractor's actions result in: • A missing or otherwise incorrect graphic presented to a student; or • A missing or incorrect test item presented to a student; or • A test item or graphic is presented to the student in an incorrect language.	• Contractor item response data report identifies 1 or more students affected; or • LEA reports 1 or more students affected; or • ODE reports 1 or more students affected. Contractor and ODE shall determine a mutually agreeable investigative method for this metric.	$1,000 per item or associated graphic.
3	During OTW, Contractor's actions result in an incorrect test (either grade or subject) presented to a student.	1 or more students affected.	$10,000 per incident
4	Contractor reports incorrect information regarding any service level areas noted in Requirements or in this Exhibit J.	1 inaccurate report(s)	$30,000 per incident
5	Contractor does not respond to a Help Desk request or application issue identified by the ODE staff or Oregon schools or districts' staff, including teachers or administrators.	ODE confirms a reported incident that Contractor failed to respond within 1 business day or does not follow up on a known request or issue within 5 business days thereafter, based on available documentation.	$15,000 per incident
6	Contractor does not resolve a Help Desk request, network, or	ODE confirms a reported incident that Contractor failed to	$25,000 per incident

	Service Level	Metric	Liquidated Damages
	System issue identified by ODE staff or Oregon school or district staff, including teachers or administrators.	respond within 1 business day or does not follow up on a known request or issue within 5 business days thereafter, based on available documentation.	
7	During OTW the testing or reporting, System is down due to hardware problems, software problems, or security related issues.	ODE confirms a reported incident of testing or reporting System downtime based on available documentation.	$3,125 per 60 minutes after 60 minutes of aggregate downtime during a school day. Not to exceed $25,000 per day.
8	Data delivery schedule from Contractor is not met as agreed upon with Contractor per Agency approved timeline.	Contractor fails to deliver data (scores) for OAKS and ELPA in accordance with the Agency approved test schedule.	$5,000 per day.
9	Contractor fails to notify ODE in advance of maintenance outside of the regularly scheduled maintenance window.	Failure to notify ODE 72 hours in advance of maintenance outside of regularly scheduled maintenance window. This does not apply to a Force Majeure as defined in this Contract.	$2,000 per incident
10	Subsequent to Final Acceptance, Contractor materially changes the test or reporting component without ODE review and written approval.	Contractor must notify ODE in advance of any material changes to the testing and reporting System and obtain ODE's written approval of said material change prior to implementing the change to the System.	$15,000 per ODE unapproved change to the testing or reporting System.
11	Failure to meet the Go-Live date in this Contract.	Go Live after January 1, 2015. Contractor shall not be liable under this Exhibit J if the Contract or the scope of work requires ODE to provide any goods or services in a timely manner, and ODE fails to provide the goods or services in a way that directly results in Contractor's inability to meet the Go-Live-date and Final Acceptance for the System.	$5,000 each day after January 1, 2015. Not to exceed $20,000 per week after first 7 calendar days of missing target date.
12	The System or any System component identified in this Contract is unavailable attributable to: • Contractor's hardware or any third party hardware utilized by Contractor to deliver Services under this contract; or • Contractor's internet service provider or network or any other third party internet service provider or network Contractor utilizes to deliver Services under this Contract; or • Any Contractor software or third party software Contractor utilizes to deliver Services under this Contract;	ODE confirms a reported incident of the testing or reporting System downtime based on available documentation.	$5,000 per day or portion thereof

	Service Level	Metric	Liquidated Damages
	or • Contractor's network security or other security related issues. Contractor shall not be liable for scheduled downtime or downtime caused by a Force Majeure event as defined in this Contract, or latencies caused by an internet service provider not under contract with Contractor for the delivery of Services under this Contract.		

				QUANTITY	REIMBURSMENT UNIT	UNIT RATE	Y1 YEAR 1 (Effective Date–June 2015)	Y2 YEAR 2 (July 2015–June 2016)	Y3 YEAR 3 (July 2016–June 2017)	Y4 YEAR 4 (July 2017–June 2018)	Y5 YEAR 5 (July 2018–June 2019)	Y6 YEAR 6 (July 2019–June 2020)	Y7 YEAR 7 (July 2020–June 2021)	Y8 YEAR 8 (July 2021–June 2022)	
			TOTAL COST, BY YEAR (This total is reflective of each year should all selective elements be used.) →				8,557,791.00	8,820,785.00	9,010,590.00	9,206,088.00	9,407,452.00	9,614,856.00	9,828,482.00	10,048,517.00	10,
Plan				1	Delivery										
n Report				1	Delivery										
				1	Delivery										
s (Acceptance Testing)				1	Delivery										
/ Site				1	License	0.00									
r Recovery Site				1	License	0.00									
/ Site				1	License	0.00									
r Recovery Site				1	License	0.00									
Access (10 years)				1	Del										
onent (10 Years)				1	Del										
AL CONTRACT AMOUNT without Selective Elements.							2,458,000.00	2,494,000.00	2,494,000.00	2,494,000.00	2,494,000.00	2,494,000.00	2,494,000.00	2,494,000.00	2,
e				1	Fee	20,000.00	20,000.00								
0 hours Maint. and Change Mgmt)				1	Fee		0.00								
				1	Fee	50,000.00	50,000.00								
				1	Fee		0.00								
nt Component				1	Fee	50,000.00	50,000.00								
nt Component				1	Fee	50,000.00	50,000.00								
mponent				1	Fee	150,000.00	150,000.00								
onent				1	Fee	98,000.00	98,000.00								
				12	Fee	170,000.00	2,040,000.00								
e				1	Fee	20,000.00		20,000.00							
0 hours Maint. and Change Mgmt)				1	Fee	0.00		0.00							
				1	Fee	50,000.00		50,000.00							

			Qty	Unit	Rate			Col1	Col2	Col3	Col4	Col5		
,			1	Fee	20,000.00			20,000.00						
0 hours Maint. and Change Mgmt)			1	Fee	0.00			0.00						
			1	Fee	50,000.00			50,000.00						
.			1	Fee	0.00			0.00						
nt Component			1	Fee	50,000.00			50,000.00						
nt Component			1	Fee	50,000.00			50,000.00						
mponent			1	Fee	150,000.00			150,000.00						
onent			1	Fee	98,000.00			98,000.00						
			12	Fee	173,000.00			2,076,000.00						
,			1	Fee	20,000.00				20,000.00					
0 hours Maint. and Change Mgmt)			1	Fee	0.00				0.00					
			1	Fee	50,000.00				50,000.00					
			1	Fee	0.00				0.00					
nt Component			1	Fee	50,000.00				50,000.00					
nt Component			1	Fee	50,000.00				50,000.00					
mponent			1	Fee	150,000.00				150,000.00					
onent			1	Fee	98,000.00				98,000.00					
			12	Fee	173,000.00				2,076,000.00					
,			1	Fee	20,000.00					20,000.00				
0 hours Maint. and Change Mgmt)			1	Fee	0.00					0.00				
			1	Fee	50,000.00					50,000.00				
			1	Fee	0.00					0.00				
nt Component			1	Fee	50,000.00					50,000.00				
nt Component			1	Fee	50,000.00					50,000.00				
mponent			1	Fee	150,000.00					150,000.00				
onent			1	Fee	98,000.00					98,000.00				
			12	Fee	173,000.00					2,076,000.00				
,			1	Fee	20,000.00						20,000.00			
0 hours Maint. and Change Mgmt)			1	Fee	0.00						0.00			
			1	Fee	50,000.00						50,000.00			
			1	Fee	0.00						0.00			
nt Component			1	Fee	50,000.00						50,000.00			
nt Component			1	Fee	50,000.00						50,000.00			
mponent			1	Fee	150,000.00						150,000.00			
onent			1	Fee	98,000.00						98,000.00			
			12	Fee	173,000.00						2,076,000.00			
,			1	Fee	20,000.00							20,000.00		
0 hours Maint. and Change Mgmt)			1	Fee	0.00							0.00		
			1	Fee	50,000.00							50,000.00		
			1	Fee	0.00							0.00		
nt Component			1	Fee	50,000.00							50,000.00		

Description			Qty	Type	Amount	Yr1	Yr2	Yr3	Yr4	Yr5	Yr6	Yr7	Yr8	
			1	Fee	50,000.00								50,000.00	
			1	Fee	0.00								0.00	
nt Component			1	Fee	50,000.00								50,000.00	
nt Component			1	Fee	50,000.00								50,000.00	
mponent			1	Fee	150,000.00								150,000.00	
onent			1	Fee	98,000.00								98,000.00	
			12	Fee	173,000.00								2,076,000.00	
:			1	Fee	20,000.00									
0 hours Maint. and Change Mgmt)			1	Fee	0.00									
			1	Fee	50,000.00									
			1	Fee	0.00									
nt Component			1	Fee	50,000.00									
nt Component			1	Fee	50,000.00									
mponent			1	Fee	150,000.00									
onent			1	Fee	98,000.00									
			12	Fee	173,000.00									2,
:			1	Fee	20,000.00									
0 hours Maint. and Change Mgmt)			1	Fee	0.00									
			1	Fee	50,000.00									
			1	Fee	0.00									
nt Component			1	Fee	50,000.00									
nt Component			1	Fee	50,000.00									
mponent			1	Fee	150,000.00									
onent			1	Fee	98,000.00									
			12	Fee	173,000.00									
ports)						5,265,000.00	5,466,950.00	5,630,959.00	5,799,888.00	5,973,885.00	6,153,102.00	6,337,695.00	6,527,826.00	6,
			1	Fee										
			1	Fee										
			1	Fee	5,265,000.00	5,265,000.00								
			1	Fee	5,466,950.00		5,466,950.00							
			1	Fee	5,630,959.00			5,630,959.00						
			1	Fee	5,799,888.00				5,799,888.00					
			1	Fee	5,973,885.00					5,973,885.00				
			1	Fee	6,153,102.00						6,153,102.00			
			1	Fee	6,337,695.00							6,337,695.00		
			1	Fee	6,527,826.00								6,527,826.00	
			1	Fee	6,723,661.00									6,
			1	Fee	6,925,371.00									
:luding Smarter Balanced)						697,204.00	718,120.00	739,664.00	761,854.00	784,710.00	808,251.00	832,499.00	857,474.00	
			1	Fee										
			1	Fee										
			1	Fee	697,204.00	697,204.00								
			1	Fee	718,120.00		718,120.00							

	Qty	Type	Unit Cost								
	1	Fee	909,694.00								
				91,865.00	94,621.00	97,460.00	100,384.00	103,396.00	106,498.00	109,693.00	112,984.00
	1	Fee									
	1	Fee									
	1	Fee	91,865.00	91,865.00							
	1	Fee	94,621.00		94,621.00						
	1	Fee	97,460.00			97,460.00					
	1	Fee	100,384.00				100,384.00				
	1	Fee	103,396.00					103,396.00			
	1	Fee	106,498.00						106,498.00		
	1	Fee	109,693.00							109,693.00	
	1	Fee	112,984.00								112,984.00
	1	Fee	116,374.00								
	1	Fee	119,865.00								
				45,722.00	47,094.00	48,507.00	49,962.00	51,461.00	53,005.00	54,595.00	56,233.00
	1	Fee									
	1	Fee									
	1	Fee	45,722.00	45,722.00							
	1	Fee	47,094.00		47,094.00						
	1	Fee	48,507.00			48,507.00					
	1	Fee	49,962.00				49,962.00				
	1	Fee	51,461.00					51,461.00			
	1	Fee	53,005.00						53,005.00		
	1	Fee	54,595.00							54,595.00	
	1	Fee	56,233.00								56,233.00
	1	Fee	57,920.00								
	1	Fee	59,658.00								
nder SOW Section – **Costs included in Sections Above**				0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
D) TB storage			N/A								
ster Recovery Effort			1								
r Recovery Effort			1								

EXHIBIT M
Request for Proposal

(Incorporated by reference)

EXHIBIT N
Contractor's Proposal

The following Sections of Contractor's Proposal, dated December 21, 2012, are incorporated by reference:

5.2.1   Cover Sheet
5.2.2   Proposer Materials
5.2.3   Proposer References
5.2.4   Minimum Qualifications and Insurance Requirements
5.2.5   Organizational Capacity and Experience
5.2.6   Key Persons and Staffing Approach
5.2.7   Privacy and Security
5.2.8   Maintenance and Support Services: Technical System Features
5.2.9   Proposed Implementation Services
5.2.10.b: Schedule of All Inclusive Labor Rates

Appendix A: Resumes
Appendix B: Business Continuity Plan
Appendix C: Project Schedule
Appendix D: Psychometric Advances in Alternate Assessments
Appendix E: Financial Stability Statements
Appendix F: Project Management Materials
Appendix G: Language Accessibility, Bias, and Sensitivity Guidelines