



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: May 16, 2018

Department: Information Technology Agenda Planning Date: May 10, 2018 Time required: 5 min

Audio/Visual aids

Contact: Scott Emry Phone: 503-584-7782

Department Head Signature: [Handwritten Signature]

TITLE Consider approval of purchase order 862477 for Firewall Service Module Replacement in the amount \$180,395.00

Issue, Description & Background CIP #18-003 and #18-006 were approved in the 17-18 budget to replace the Cisco Firewall Service Module (FWSM) with a Cisco Firepower 4110 ASA appliance. As of September 30, 2017 the FWSM, which is part of the county network core, will no longer be supported by Cisco. The two CIPs include Firepower which provides IDS and web filtering functionality at the firewall level. The scope of this project is to replace the aging FWSM, which is at the heart of the county's network, with a new best in breed Cisco firewall appliance. Capital Outlay: Project costs will be budgeted within CIP #18-006, \$92,150 and CIP #18-003, \$53,500. Other Non-Capital Outlay: Costs that are not budgeted as capital outlay but are necessary to complete the project will include hardware and software subscription licenses totaling \$34,745 which will be paid for out of the existing IT budget. The purchase will be made from CDW-G through Oregon Procurement Information Network agreement number 5603.

Financial Impacts: The CIPs have been approved to replace aging equipment that is end of life and will support the increasing network demands for Marion County.

Impacts to Department & External Agencies After September 30, 2017, hardware and software support will no longer be available for the current Firewall Services Module. This exposes a core firewall to security vulnerabilities that will no longer be patched and will have no hardware replacement alternatives for equipment that has been in production for 13 years. Both scenarios greatly decrease the security posture of Marion County and increase the risk of significant down time to the county network.

Options for Consideration: 1) Approve purchase order 862477 2) Withhold approval of purchase order 862477

Recommendation: IT staff recommends approval of purchase order 862477.

List of attachments: Purchase Order 862477

Presenter: Scott Emry, IT Director and Ken Pearson, IT Operations Manager



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

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*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Jacob Clotfelter, jclotfelter@co.marion.or.us



**MARION COUNTY  
FINANCE DEPARTMENT**

PO Box 14500  
555 Court St NE #4247  
Salem, OR 97309-5036

CDW GOVERNMENT LLC  
75 REMITTANCE DR STE 1515  
CHICAGO, IL 60675 United States

Purchase Order		
Purchase Order No	Revision	Page
862477	0	1
<b>Ship To:</b>		
MARION COUNTY INFORMATION TECHNOLOGY 555 Court St Ne Ste 4130  Salem, OR 97301 United States		
<b>Bill To:</b>		
MARION COUNTY INFORMATION TECHNOLOGY P O Box 14500  Salem, OR 97309-5036 United States		

Customer Acct No	Supplier No	Order Date / Buyer	Revised Date / Buyer
	571900	03-MAY-18 C Klein	C Klein
Payment Terms	Ship Via		F.O.B
Immediate	Best method		Destination
Freight Terms	Request Or Deliver To		Confirm To / Telephone
Prepaid			( )

Line #	Description	Delivery Date	Quantity	Unit	Unit Price	Total
1	Firewall Replacement Project (CIP #18-006 and CIP#18-003) Network Hardward, Firewall Services Module, Subscription Maintenance CDW-G Quote #JSKR643  THIS PURCHASE IS PLACED AGAINST STATE OF OREGON SOLICITATION # AND/OR PRICE AGREEMENT #5603. THE CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S & C'S, EXPRESS OR IMPLIED.  The following documents are attached and incorporated herein:  Attachment 1: State of Oregon Price Agreement 5603 and Amendments 1 through 2  DEPARTMENT CONTACT NAME: CYNTHIA KLEIN PHONE NUMBER: 503-584-7796  FIREWALL REPLACEMENT PROJECT CDW-G QUOTE #JSKR643			US Dollar		\$180,395.00
<b>Total</b>						\$180,395.00

**INSTRUCTIONS TO VENDOR**

- Please direct any questions concerning this purchase order to invoiced department.
- Purchase Order Number must appear on all invoices, packages and shipping documents relating to this order.
- Separate invoices must be submitted for each Purchase Order.
- Do not overship or substitute.
- If you cannot supply the items requested, please notify issuing authority at once.

**Note : Please notify department contact (above) for all inquiries regarding this Purchase Order**

Authorized By: \_\_\_\_\_

**MARION COUNTY PURCHASING**  
NOT VALID Unless Signed By Purchasing

**MARION COUNTY TERMS AND CONDITIONS**

**1. INSPECTIONS:** County may inspect and test the Goods and related Services (collectively, Goods). County may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, County may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit County's rights, including its rights under the Uniform Commercial Code, ORS chapter 72 (UCC).

**2. DELIVERY:** Deliveries will be F.O.B destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

**3. PAYMENT:** County shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received, whichever is later

**4. COUNTY PAYMENT OF CONTRACTOR CLAIMS:** If Contractor does not pay promptly any claim that is due for Goods or Services furnished to the Contractor by any subcontractor in connection with this PO, the County may pay such claim and charge that payment against any payment due to the Contractor under this PO. The County's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

**5. WARRANTIES:** Contractor agrees to perform its services with that highest standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. Contractor represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. Contractor shall transfer all warranties to the County.

**6. TERMINATION OF PO:** The PO may be terminated under the following conditions: a. By written mutual agreement of both parties. Termination under this provision may be immediate. b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate. c. The County may terminate all or part of this PO for the following reasons: (1) If the consultant fails to provide services, or fails to meet the performance standards as specified in this PO (or subsequent modifications of this PO), within the time specified herein or any extension thereof. Termination under this provision may be immediate; (2) If the consultant fails to start services on the date specified by Marion County in this PO or subsequent modifications to this contract. Termination under this provision may be immediate. (3) Failure of the consultant or Marion County to comply with the provisions of this PO and all applicable federal, state, and local laws and rules may be cause for termination of this contract. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination. If this PO is terminated by either party, for reasons other than breach of contract, the County agrees to pay to the consultant all costs and expenses associated with services satisfactorily provided to the effective date of termination.

**7. INDEMNIFICATION.** The Contractor shall save harmless, indemnify, and defend the County for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this PO to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.

**8. GOVERNING LAW, VENUE:** This PO shall be governed by the laws of the State of Oregon. Any action commenced in connection with this PO shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing

is without limitation to or waiver of any other rights or remedies of the County according to law.

**9. FORCE MAJEURE:** Neither party is responsible for delay or default caused by an event beyond its reasonable control. County may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

**10. SUBCONTRACTING/NONASSIGNMENT.** No portion of the PO may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

**11. MAINTENANCE, RETENTION, AND CONFIDENTIALITY OF RECORD.** The Contractor agrees to establish and maintain records and statistics as follows: Financial records, which indicate the number of hours of service provided under this contract and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. To the extent applicable, client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2.

**12. COMPLIANCE WITH APPLICABLE LAWS:** The Contractor shall comply with all applicable Federal, State and local laws, rules and regulations. All provisions of ORS 279B (Public Contracts and Purchasing) are incorporated herein to the extent applicable to POs.

**13. WORKERS' COMPENSATION:** Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

**14. SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

**15. MATERIAL SAFETY DATA SHEET:** Contractor shall provide County with a Material Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such Goods.

**16. AMENDMENTS:** All amendments to this PO must be in writing, signed by County.

**17. SEVERABILITY:** If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

**18. WAIVER:** Failure of either party to enforce any provision of this PO is not a waiver or relinquishment of that party's rights to such performance in the future or to enforce any other provisions.

**19. TAX CERTIFICATION:** Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.

## STATE OF OREGON



**PRICE AGREEMENT: 5603**

for

**IT HVAR**

**(HARDWARE VALUE ADDED RESELLER)**

with

**CDW GOVERNMENT LLC, AN ILLINOIS LIMITED LIABILITY  
COMPANY**



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## SECTION 1: AGREEMENT

This Price Agreement (“Agreement”) is between the State of Oregon, acting by and through its Department of Administrative Services Procurement Services (“DASPS”) and CDW Government LLC, an Illinois Limited Liability Company (“IT HVAR”).

### 1.1 PARTIES

The only parties to this Agreement are DASPS and IT HVAR.

### 1.2 KEY PERSONS

#### 1.2.1 DASPS

##### **Contract Administrator**

Toby Giddings

1225 Ferry Street SE

Salem OR 97301

(503) 378-5345

toby.giddings@oregon.gov

#### 1.2.2 IT HVAR

##### **Contract Manager**

Rick Martinez

26125 Riverwoods Blvd

Mettawa, IL 60045

(847) 371-7182

richmar@cdw.com

##### **Account Manager**

Adam Ryan

120 S. Riverside Plaza

Chicago, IL 60606

(866) 682-0927

adamrya@cdw.com

##### **Finance & Leasing Specialist**

Jim Heidenfelder

120 S. Riverside Plaza

Chicago, IL 60606

(866) 730-4911

jimhei@cdw.com

### 1.3 AUTHORIZED PURCHASERS

**1.3.1** As used in this Agreement, (“Authorized Purchaser”) means those entities authorized to purchase under a Department Price Agreement. Authorized Purchasers include state agencies, ORCPP members, and other units of local government.

### 1.4 TERM OF AGREEMENT

**1.4.1** The initial term of this Agreement begins on the date this Agreement has been signed by DASPS and IT HVAR and all required approvals have been obtained (the “Effective Date”) and ends on September 30, 2017 unless sooner terminated or extended as provided in this Agreement. DASPS has the option to extend this Agreement. The initial term and all extension terms are collectively referred to as the “Term” of this Agreement.

**1.4.2** After this Agreement is terminated, IT HVAR shall not accept new ordering instruments.

**1.4.3** Contracts may extend beyond the termination of the Agreement, but not be renewed or amended after the termination of the Agreement.

**1.4.4** DASPS may terminate this Agreement upon 30 calendar days' prior written notice to IT HVAR for any or no reason.

## **1.5 DEFINITIONS**

Capitalized terms not specifically defined in this Agreement are defined in OAR 125-246-0110.

**ORCPP:** The Oregon Cooperative Purchasing Program is a program of qualified agencies and organizations authorized to purchase the Goods and Services available under a Department Price Agreement.

**Related Services:** Services may not be acquired as a stand-alone. All service must accompany a purchase of goods. Services must be those that the original equipment manufacturer would provide or perform for any purchaser.

**End User:** Individuals who work on behalf of Authorized Purchaser.

## **SECTION 2: GOODS, SERVICES, AND PRICING METHODOLOGY**

### **2.1 GOODS AND SERVICES**

IT HVAR shall provide goods and Related Services (“Goods”) as outlined in Exhibit A:

- Exhibit A-1 Categories
- Exhibit A-2 Manufacturers
- Exhibit A-3 Pricing Methodology
- Exhibit A-4 Contract Management Services
- Exhibit A-5 Restrictions

### **2.2 PRICING METHODOLOGY**

**2.2.1** Except as provided in this section, during the Term of this Agreement, IT HVAR shall offer Goods to Authorized Purchasers at prices that follow the methodology listed in Exhibit A-3.

**2.2.2** IT HVAR and Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between IT HVAR and Authorized Purchaser.

**2.2.3** Either party to this Agreement may request a modification to the pricing methodology, in whole or in part.



## SECTION 3: PROCESS

Authorized Purchasers may buy or lease Goods by issuing ordering instruments that create and become part of separate contracts (“Contracts”). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and IT HVAR. DASPS is an intended beneficiary of each Contract created by an ordering instrument.

### 3.1 MANUFACTURER SELECTION PROCESS

#### 3.1.1 LARGE PURCHASES: Purchases or leases over \$10,000

Authorized Purchasers not subject to DAS procurement authority may select the manufacturer using their own manufacturer selection method.

Authorized Purchasers subject to DAS procurement authority shall select the manufacturer using one of the following manufacturer selection methods:

##### 3.1.1.1 Brand Name Justification

A documented brand name justification in compliance with applicable statute and rule.

##### 3.1.1.2 Best Value Analysis

Submit the minimum specifications of the Authorized Purchaser’s need to the IT HVAR requesting a quote of the available options. Determine best value based on, but not limited to the following:

- Price
- Availability
- Past performance
- Compatibility

#### 3.1.2 SMALL PURCHASES: Purchases under \$10,000

Authorized Purchaser may select the manufacturer of its choice in compliance with applicable statute and rule.

### 3.2 ORDERING INSTRUMENTS

Authorized Purchasers may order Goods during the Term of this Agreement using one of the ordering instruments described in this section. Unless expressly authorized by DASPS in writing, IT HVAR shall not accept a different type of ordering instrument from an Authorized Purchaser.

#### 3.2.1 ELECTRONIC ORDERING: Purchases may be placed electronically through the following methods:

- IT HVAR website

- Email Notification
- Telephone
- Electronic Data Interchange (EDI)
- CDW iOS App
- e-Procurement Application
- Purchase Order Fax
- Purchase Order via Standard Postal Service

### **3.2.2 PURCHASE ORDER:** Authorized Purchasers may use a purchase order to order Goods.

Authorized Purchasers subject to DAS procurement authority must use the DASPS-approved purchase order form attached as Exhibit B.

Authorized Purchasers not subject to DAS procurement authority may use their own purchase order forms as ordering instruments.

To be effective, the purchase order must specify all of the following:

- Language stating that the purchase order is submitted under this Agreement (and include the Agreement number)
- The specific Goods and quantity of each item ordered
- The net price
- The requested delivery schedule
- The delivery location(s)
- The invoicing address
- The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number

### **3.3 ACCEPTANCE OF ORDERING INSTRUMENT:**

IT HVAR will respond to an ordering instrument within 5 business days after it is received. IT HVAR may reject an ordering instrument:

- using the same means as were used to deliver the ordering instrument, or
- by e-mail or facsimile if that information is evident on the ordering instrument.

IT HVAR shall specify the reason(s) for rejection.

### **3.4 CANCELLATION; INSPECTION AND ACCEPTANCE**

Unless otherwise provided in a Contract, the Authorized Purchaser may cancel an order in whole or in part before Goods are delivered. The Authorized Purchaser has 10 calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide IT HVAR with written notice of rejection. Notice of rejection must include itemization of apparent defects, including but not limited to:

- discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or
- otherwise nonconforming Goods (including late delivery).

If cure is allowed, notice of rejection must also specify when cure will be allowed. All returns are subject to IT HVAR's then current Return Policy, which, can be found at:

[http://webojects.cdw.com/webojects/docs/PDFs/Return\\_Policy.pdf](http://webojects.cdw.com/webojects/docs/PDFs/Return_Policy.pdf).

- 3.4.1** The Authorized Purchaser may elect to have IT HVAR deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, IT HVAR shall deliver substitute conforming Goods within 10 calendar days of receipt of notice of rejection if Goods are available in stock with IT HVAR, or 30 calendar days if Goods are not in stock or a special order.
- 3.4.2** If the Goods are rejected or acceptance is revoked, IT HVAR shall refund any Contract payments that have been made with regard to the rejected Goods, and shall, at IT HVAR's sole cost and expense, remove the Goods within 7 calendar days of receiving notice of rejection or revocation of acceptance.
- 3.4.3** Nothing contained in this section precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

## **3.5 FINANCING METHODS**

### **3.5.1 PURCHASING**

Authorized Purchasers may pay for purchases using any of the following methods:

- Credit Card
- Invoice

### **3.5.2 LEASING OR FINANCING**

Authorized Purchasers may enter into lease agreement(s) to acquire Goods through this Agreement. Leasing agreements may be negotiated and managed between:

- Authorized Purchaser and
- IT HVAR Finance and Leasing Specialist and
- Leasing Company

## **3.6 INVOICES**

IT HVAR shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. IT HVAR shall include all of the following in its invoice:

- Price Agreement number.

- Ordering instrument number.
- Goods ordered.
- Date delivered.
- Volume or quantity of Goods delivered.
- The price per item of Goods.
- The total amount invoiced.
- The address to which payment is to be sent.

### 3.7 PAYMENT

- 3.7.1 DISCOUNT TERMS:** Payment made on any invoice within 10 calendar days of issue may be short-paid by 0.1% if the purchase was made via Purchase Order.
- 3.7.2 RESPONSIBILITY:** IT HVAR shall look solely to Authorized Purchaser for payment of all amounts that may be due under a Contract. AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER A CONTRACT. Subject to Authorized Purchaser's acceptance of Goods, payment is due from Authorized Purchaser within 30 calendar days after the date of the invoice.
- 3.7.3 PAYMENT ADDRESS:** Payments must be sent to the address specified in the IT HVAR's invoice.
- 3.7.4 OVERDUE CHARGES:** At IT HVAR's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).
- 3.7.5** All payments are subject to ORS 293.462.

## SECTION 4: MANAGEMENT

### 4.1 PRICE AGREEMENT

- 4.1.1 REPORTING:** IT HVAR shall remit to DASPS a Vendor Collected Administrative Fee (VCAF) and Volume Sales Reports (VSR) as described in Exhibit C.
- 4.1.2 INSURANCE:** IT HVAR shall obtain insurance specified in Exhibit D and shall maintain the insurance until all Contracts under this Agreement are terminated.
- 4.1.3 PERFORMANCE EVALUATIONS:** DASPS may conduct evaluations of IT HVAR's performance during the term of this Agreement. DASPS will compile and maintain completed evaluations, which will become a written record of IT HVAR's performance. DASPS may also maintain as part of that written record information obtained from IT HVAR during an exit interview following Agreement termination. DASPS may provide copies of any documents in the written record to the IT HVAR and third parties upon request. DASPS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and

decisions to award contracts.

## 4.2 PROGRAM

### 4.2.1 IMPLEMENTATION

#### 4.2.1.1 Website (State Level)

IT HVAR shall enable the Oregon IT HVAR website within 15 business days of the Effective Date of the Agreement. The site must be configured as mutually agreed between Contract Manager and DASPS Contract Administrator regarding:

- Users
- Permissions
- Restrictions

### 4.2.2 MAINTENANCE/IMPROVEMENT

#### 4.2.2.1 REGULAR MEETINGS

4.2.2.1.1 **Quarterly Business Reviews:** IT HVAR Contract Manager and DASPS Contract Administrator shall meet no less than once per calendar quarter for business reviews. The reviews will include, but will not be limited to:

- Manufacturers offered
- Total contract spend by manufacturer
- Agreement and Contract Highlights – documentation of any pressing issues identified from quarter to quarter
- Service Level Requirements
- Delivery – average days to ship
- Returns – total count of returns
- Data interpretation for any reports state customers run for themselves

4.2.2.1.2 **Bi-annual Contract Improvement Meetings:** IT HVAR Contract Manager and DASPS Contract Administrator shall meet no less than twice per calendar year for contract improvement meetings. The meetings will include, but will not be limited to:

- Agreement and Contract processes
- Incidences of note
- Feedback from Contract Administrator

#### 4.2.2.2 WEBSITE AND TRAINING

4.2.2.2.1 **Website (Authorized Purchaser Level):** IT HVAR shall enable an entity under the Oregon IT HVAR website within 5 business days of a written request to the Account Manager. The entity enablement must be configured as mutually

agreed between Account Manager and the entity representative regarding:

- Users
- Permissions
- Restrictions

4.2.2.2.2 **Education/Training:** IT HVAR to provide education/training to End Users regarding:

- Website
- Reporting
- Ordering
- Invoicing

### 4.2.3 PROMOTION

#### 4.2.3.1 Oregon IT HVAR Promotion and Product Expo

IT HVAR shall coordinate and host an IT HVAR promotion event once per calendar year. The event will be located in Salem unless an alternative location is approved by DASPS Contract Administrator. The event must include but will not be limited to:

- A number of manufacturers mutually agreed upon between IT HVAR and DASPS Contract Administrator.
- Manufacturer representatives and products to promote products currently available through the IT HVAR agreement and showcase upcoming products and technology.
- Marketing and promotion of the event.

#### 4.2.3.2 Key Events

IT HVAR shall promote the Agreement at key events throughout Oregon such as the Association for Computer Professionals in Education (ACPE), Oregon Digital Government Summit, and the Oregon Public Purchasing Association (OPPA), among others.

### 4.3 OREGON ECONOMIC SUPPORT

IT HVAR shall conduct various activities to stimulate Oregon's economy, including but not limited to:

- 4.3.1 Continually seeking to establish partnerships with local Oregon businesses through IT HVAR's partner-onboarding process.
- 4.3.2 Attending key events around the State to network with local businesses and bring business opportunities to their attention.
- 4.3.3 Highlighting local products and services on the IT HVAR website.

- 4.3.4 Working with the Certification Office of Business Inclusion and Diversity (COBID), (known as the Office of Minorities, Women, and Emerging Small Business (OMWESB) through December 31, 2015) to promote the opportunity to partner with the IT HVAR.

## SECTION 5: TERMS AND CONDITIONS

### 5.1 TERMS AND CONDITIONS APPLICABLE TO THE AGREEMENT

- 5.1.1 **AGREEMENT DOCUMENTS; ORDER OF PRECEDENCE:** The Agreement consists of the Agreement and the attached Exhibits. In the event of a conflict, the order of precedence is as follows

- Price Agreement, less its exhibits
- Attached Exhibits
  - Exhibit A-1: Categories
  - Exhibit A-2: Manufacturers
  - Exhibit A-5: Restrictions
  - Exhibit A-3: Pricing Methodology
  - Exhibit A-4: Contract Management Services
  - Exhibit D: Insurance
  - Exhibit C: Volume Sales Reports and Vendor Collected Administrative Fees
  - Exhibit B: PO Form
- Any Contract

- 5.1.2 **CHOICE OF LAW:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

- 5.1.3 **DESIGNATION OF FORUM AND CONSENT TO JURISDICTION:** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County, provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. IT HVAR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

- 5.1.4 **ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS:** IT HVAR shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Agreement, in whole or in part, without the prior written approval of DASPS, except IT HVAR may

assign to its affiliates or to any successor corporation in the event of a merger or acquisition without DASPS' prior approval, provided, however, that IT HVAR shall send DASPS written notice of any such assignment. Further, no such written approval shall relieve IT HVAR of any obligations under this Agreement, and any assignee, transferee, or delegate shall be considered the agent of IT HVAR. The provisions of this Agreement are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

**5.1.5 FORCE MAJEURE:** Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DASPS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement.

In the event of any such delay, IT HVAR's obligations are suspended to the extent of and for the duration of such causes. However, IT HVAR shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of IT HVAR's obligations with all reasonable diligence. If necessary, the period for performance under this Agreement will be extended to enable IT HVAR, once such causes have been removed, to fulfill its obligations hereunder.

**5.1.6 NOTICES:** Except as otherwise expressly provided in this Agreement, any communications between the parties, or notices to be given under this Agreement, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the contacts listed in Section 1.2. Any communication or notice via the United States Postal Service is deemed given 5 calendar days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

**5.1.7 MERGER CLAUSE; AMENDMENT; WAIVER:** This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement on the subject matter. No amendment of this Agreement is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of DASPS or an Authorized Purchaser to enforce any provision of this Agreement is not a waiver by DASPS or the Authorized Purchaser of that or any other provision.

**5.1.8 ACCESS TO RECORDS:** IT HVAR shall retain, maintain, and keep accessible all records relevant to this Agreement (the "Records") for a minimum of 3 years, or such longer



period as may be required by applicable law following expiration or termination of the Agreement or any Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Agreement or any Contract, whichever date is later. Financial Records will be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this section, IT HVAR shall permit DASPS and its duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

**5.1.9 TIME IS OF THE ESSENCE:** Time is of the essence for performance of IT HVAR's performance obligations under this Price Agreement.

**5.1.10 INDEMNIFICATION:** IT HVAR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY DASPS, THE STATE OF OREGON AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL THIRD PARTY CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (COLLECTIVELY, "CLAIM") WHICH MAY BE BROUGHT OR MADE AGAINST DASPS, THE STATE, OR THEIR OFFICERS, EMPLOYEES OR AGENTS, AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF IT HVAR, ITS EMPLOYEES, OR AGENTS, RELATED TO THIS AGREEMENT, (II) ANY ACT OR OMISSION BY IT HVAR THAT CONSTITUTES A MATERIAL BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS. DASPS OR STATE SHALL PROMPTLY NOTIFY IT HVAR IN WRITING OF ANY CLAIM OF WHICH DASPS OR STATE BECOMES AWARE. IT HVAR'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF DASPS, OR (II) AUTHORIZED PURCHASER'S MODIFICATION OF GOODS WITHOUT IT HVAR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE'S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES OR AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. IT HVAR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN

ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

Data and Network Services. Except to the extent that a claim or loss results from the negligent, reckless or intentional acts or omissions of Authorized Purchaser, IT HVAR shall assume liability for all claims or losses related to data loss or breach of security caused directly or indirectly by or resulting from the Goods or Services provided by IT HVAR.

UNDER NO CIRCUMSTANCES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL IT HVAR, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF IT HVAR HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, AND WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. IN THE EVENT OF ANY LIABILITY INCURRED BY IT HVAR OR ANY OF ITS AFFILIATES HEREUNDER, THE ENTIRE LIABILITY OF IT HVAR AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) 1.5 TIMES THE DOLLAR AMOUNT PAID BY THE STATE, DASPS OR AUTHORIZED PURCHASER FOR EITHER THE SPECIFIC PURCHASED ITEM(S) GIVING RISE TO THE CLAIM; OR (B) \$1,000,000.00.

### 5.1.11 BREACH

#### 5.1.11.1 By IT HVAR: IT HVAR breaches this Agreement if:

- IT HVAR institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- IT HVAR no longer holds a license or certificate that is required for IT HVAR to perform IT HVAR's obligations under this Agreement; or
- IT HVAR commits any breach of any covenant, warranty, obligation or certification under this Agreement, provided however that IT HVAR may cure the breach within 30 calendar days after delivery of the notice or within such other period specified in DASPS' notice of default.

#### 5.1.11.2 By DASPS: DASPS breaches this Agreement if DASPS commits any breach of any covenant, warranty, or obligation under this Agreement and such breach is not cured within 10 business days after delivery of IT HVAR's notice of breach or such longer period as IT HVAR may specify in such notice.

### 5.1.12 REMEDIES

#### 5.1.12.1 DASPS' Remedies: If IT HVAR is in breach under Section 5.1.11, in addition to the remedies afforded elsewhere in this Agreement, DASPS may recover any and all

direct damages suffered as the result of IT HVAR's breach. DASPS may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

- Restriction of sales under the Agreement
- Suspension of sales under the Agreement
- Termination of the Agreement as provided in Section 5.1.13;
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- These remedies are cumulative to the extent the remedies are not inconsistent, and DASPS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**5.1.12.2 IT HVAR's Remedies:** If DASPS is in breach under Section 5.1.11, IT HVAR's sole remedy is termination of this Agreement.

### 5.1.13 TERMINATION

**5.1.13.1 By Mutual Consent:** This Agreement may be terminated at any time by mutual written consent of DASPS and IT HVAR.

**5.1.13.2 Rights of DASPS.** DASPS may, at its sole discretion, terminate this Contract for convenience with 30 calendar days' prior written notice. DASPS may terminate this Agreement immediately upon notice to IT HVAR, or at such later date as DASPS may establish in such notice if IT HVAR is in breach of this Contract under Section 5.1.11. Upon receipt of written notice of termination, IT HVAR shall stop performance under this Agreement or any Contract if and as directed by Authorized Purchaser.

**5.1.13.3 Rights of The IT HVAR:** IT HVAR may terminate this Agreement with a minimum 10 calendar days' prior written notice to DASPS, if DASPS is in breach of this Agreement as described in Section 5.1.11.

**5.1.14 SURVIVAL:** The following provisions survive termination or expiration of this Agreement: Sections 5.1.2, 5.1.3, 5.1.8, 5.1.10, 5.1.12, 5.1.15, Exhibit C.

**5.1.15 SEVERABILITY:** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

**5.1.16 INTENDED BENEFICIARIES:** DASPS and IT HVAR are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give 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 Agreement.

- 5.1.17 PAYMENTS; LIENS; RECYCLING:** DASPS’s performance under this Agreement is conditioned upon IT HVAR’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated into this Agreement by reference. IT HVAR shall, to the maximum extent economically feasible in the performance of this Agreement, 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)).
- 5.1.18 FOREIGN CONTRACTOR:** If the IT HVAR is not domiciled in or registered to do business in the State of Oregon, IT HVAR shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to the Agreement. IT HVAR shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon before entering into this Agreement.
- 5.1.19 CERTIFICATION OF COMPLIANCE WITH TAX LAWS:** By signature on this Agreement for IT HVAR, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of IT HVAR and that IT HVAR is, to the best of the undersigned’s knowledge, IT HVAR is not subject to backup withholding because: (i) Contractor is exempt from backup withholding, (ii) IT HVAR has not been notified by the IRS that IT HVAR is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified IT HVAR that IT HVAR is no longer subject to backup withholding.

For a period of no fewer than six calendar years preceding the Effective Date of this Price Agreement, IT HVAR faithfully has complied with:

- 5.1.19.1** All tax laws of this state; For the purposes of this Section 15.1.19, “tax laws” includes:
- All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
  - Any tax provisions imposed by a political subdivision of this state that applied to IT HVAR, to IT HVAR’s property, operations, receipts, or income, or to IT HVAR’s performance of or compensation for any work performed by IT HVAR;
  - Any tax provisions imposed by a political subdivision of this state that applied to IT HVAR, or to goods, services, or property, whether tangible or intangible, provided by IT HVAR; and
  - Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- 5.1.19.2** Any tax provisions imposed by a political subdivision of this state that applied to IT HVAR, to IT HVAR’s property, operations, receipts, or income, or to IT HVAR’s performance of or compensation for any work performed by IT HVAR; (iii) Any tax provisions imposed by a political subdivision of this state that applied to IT HVAT, or to goods, services, or property, whether tangible or intangible, provided by IT HVAR;

and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Further, IT HVAR shall, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state.

Any violation of this subsection 5.1.19 constitutes a material breach of this Agreement. Further, any violation of IT HVAR's warranty set forth in subsection 5.1.19 also shall constitute a material breach of this Agreement. Any violation shall entitle DASPS or Authorized Purchaser to terminate this Agreement or any Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement or Contract, and to pursue any or all of the remedies available under this Agreement or Contract at law, or in equity, including but not limited to:

- Termination of this Agreement or Contract, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to IT HVAR, in an amount equal to State's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DASPS or Authorized Purchaser may recover any and all damages suffered as the result of IT HVAR's breach of this Agreement or Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services or Goods and applications.

These remedies are cumulative to the extent the remedies are not inconsistent, and DASPS or Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**5.1.20 COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.

## **5.2 TERMS AND CONDITIONS APPLICABLE TO CONTRACTS**

**5.2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Section 5.2 and any additional attached terms and conditions. In the event of a conflict, the order of precedence is as follows

- Agreement
- Agreement Exhibits (order TBD)
  - Exhibit A-4: Contract Management Services
  - Exhibit A-5: Restrictions
  - Exhibit A-1: Categories
  - Exhibit A-2: Manufacturers
  - Exhibit A-3: Pricing Methodology

- Exhibit D: Insurance
- Exhibit C: Volume Sales Reports and Vendor Collected Administrative Fees
- Exhibit B: PO Form
- Section 5.2 terms and conditions
- Ordering Instrument
- Additional attached terms and conditions

**5.2.2 CHOICE OF LAW:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to a Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

### **5.2.3 DESIGNATION OF FORUM AND CONSENT TO JURISDICTION**

**5.2.3.1 State Contract Venue; Consent To Jurisdiction:** Any claim, action, suit or proceeding (collectively, “Claim”) between an Authorized Purchaser that is an agency of the State of Oregon and IT HVAR 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 unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. IT HVAR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State’s or Authorized Purchaser’s sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

**5.2.3.2 ORCPP Contract Venue; Consent To Jurisdiction:** Any Claims between IT HVAR and an ORCPP Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract order shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Authorized Purchaser resides, or at the ORCPP Authorized Purchaser’s option, within such other county as the ORCPP Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP Authorized Purchaser resides. IT HVAR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP Authorized Purchaser’s sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

**5.2.4 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS:** IT HVAR shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under a Contract, in whole or in part, without the prior written approval of the Authorized Purchaser, except IT HVAR may assign to its affiliates or to any successor corporation in the event of a merger or acquisition without Authorized Purchaser's prior approval, provided, however, that IT HVAR shall send Authorized Purchaser written notice of any such assignment. Further, no such written approval shall relieve IT HVAR of any obligations under a Contract, and any assignee, transferee, or delegate shall be considered the agent of IT HVAR. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

**5.2.5 FORCE MAJEURE:** Neither Authorized Purchaser nor IT HVAR is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. Authorized Purchaser may terminate a Contract upon written notice after determining such delay or default will reasonably prevent successful performance of a Contract.

In the event of any such delay, IT HVAR's obligations are suspended to the extent of and for the duration of such causes. However, IT HVAR shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of IT HVAR's obligations with all reasonable diligence. If necessary, the period for performance under a Contract will be extended to enable IT HVAR, once such causes have been removed, to fulfill its obligations hereunder.

**5.2.6 NOTICES:** Except as otherwise expressly provided in this Agreement, any communications between the parties, or notices to be given under a Contract, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the Authorized Purchaser's authorized representative stated in the ordering instrument or to the IT HVAR's authorized representative listed in Section 1.2.2. Any communication or notice via the United States Postal Service is deemed given 5 calendar days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

**5.2.7 MERGER CLAUSE; AMENDMENT; WAIVER:** A Contract constitutes the entire agreement between IT HVAR and Authorized Purchaser on the subject matter of the Contract. There are no understandings, agreements, or representations, oral or written, not specified in the Contract on the subject matter. No amendment of a Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of a Contract is not a waiver by Authorized Purchaser of that or any other provision.

**5.2.8 ACCESS TO RECORDS:** IT HVAR shall retain, maintain, and keep accessible all records relevant to the a Contract (the “Records”) for a minimum of 3 years, or such longer period as may be required by applicable law following expiration or termination of a Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this section, IT HVAR shall permit DASPS, Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

**5.2.9 TIME IS OF THE ESSENCE:** Time is of the essence for performance of IT HVAR’s performance obligations under a Contract.

**5.2.10 INDEMNIFICATION:** IT HVAR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE AUTHORIZED PURCHASER, THE STATE OF OREGON AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL THIRD PARTY CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (COLLECTIVELY, “CLAIM”) WHICH MAY BE BROUGHT OR MADE AGAINST ANY AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICERS, EMPLOYEES OR AGENTS, AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF IT HVAR, ITS EMPLOYEES, OR AGENTS, RELATED TO A CONTRACT, (II) ANY ACT OR OMISSION BY IT HVAR THAT CONSTITUTES A MATERIAL BREACH OF A CONTRACT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS. AUTHORIZED PURCHASER OR STATE SHALL PROMPTLY NOTIFY IT HVAR IN WRITING OF ANY CLAIM OF WHICH AUTHORIZED PURCHASER OR STATE BECOMES AWARE. IT HVAR’S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF AUTHORIZED PURCHASER, OR (II) AUTHORIZED PURCHASER’S MODIFICATION OF GOODS WITHOUT IT HVAR’S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE’S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES OR AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. IT HVAR’S OBLIGATION TO PAY



FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

UNDER NO CIRCUMSTANCES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL IT HVAR, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF IT HVAR HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, AND WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. IN THE EVENT OF ANY LIABILITY INCURRED BY IT HVAR OR ANY OF ITS AFFILIATES HEREUNDER, THE ENTIRE LIABILITY OF IT HVAR AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) 1.5 TIMES THE DOLLAR AMOUNT PAID BY THE STATE, DASPS OR AUTHORIZED PURCHASER FOR EITHER THE SPECIFIC PURCHASED ITEM(S) GIVING RISE TO THE CLAIM; OR (B) \$1,000,000.00.

## 5.2.11 BREACH

### 5.2.11.1 By IT HVAR: IT HVAR breaches a Contract if:

- IT HVAR institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- IT HVAR no longer holds a license or certificate that is required for IT HVAR to perform IT HVAR's obligations under a Contract; or
- IT HVAR commits any breach of any covenant, warranty, obligation or certification under a Contract, provided however that IT HVAR may cure the breach within 30 calendar days after delivery of notice or within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the breach is curable by IT HVAR.

### 5.2.11.2 By Authorized Purchaser: Authorized Purchaser breaches a Contract if:

- Authorized Purchaser fails to pay IT HVAR any amount pursuant to the terms of a Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of IT HVAR's notice or such longer period as IT HVAR may specify in such notice; or
- Authorized Purchaser commits any breach of any covenant, warranty, or obligation under a Contract and such breach is not cured within ten (10) business days after delivery of IT HVAR's notice of breach or such longer period as IT HVAR may specify in such notice.

## 5.2.12 REMEDIES

**5.2.12.1 Authorized Purchaser's Remedies:** If IT HVAR is in breach under Section 5.2.11, in addition to the remedies afforded elsewhere in a Contract, the Authorized Purchaser may recover any and all direct damages suffered as the result of IT HVAR's breach. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under a Contract and at law or in equity, including, but not limited to:

- Termination of a Contract as provided in Section 5.2.13;
- Withholding all monies due for invoiced Goods that IT HVAR is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.
- These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**5.2.12.2 IT HVAR's Remedies:** If Authorized Purchaser terminates a Contract, or if Authorized Purchaser is in breach under Section 5.2.11 and whether or not IT HVAR elects to exercise its right to terminate a Contract under Section 5.2.13, IT HVAR's sole remedy is:

- a claim against Authorized Purchaser for the unpaid purchase price for Goods delivered,
- with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed ,
- with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed, and
- any claim(s) allowed by applicable law.

If previous amounts paid to IT HVAR exceed the amount due to IT HVAR under this section, IT HVAR shall pay any excess to Authorized Purchaser upon written demand.

## 5.2.13 TERMINATION

**5.2.13.1 By Mutual Consent:** A Contract may be terminated at any time by mutual written consent of Authorized Purchaser and IT HVAR.

**5.2.13.2 Rights of Authorized Purchaser.** Authorized Purchaser may, at its sole discretion, terminate a Contract for convenience with 30 calendar days' prior written notice. Authorized Purchaser may terminate a Contract immediately upon notice to IT HVAR, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

- Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under a Contract;
- federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by Authorized Purchasers under the Price Agreement is prohibited, or Authorized Purchasers are prohibited from paying for such Goods from the planned funding sources; or
- IT HVAR is in breach of a Contract under Section 5.2.11. Upon receipt of written notice of termination, IT HVAR shall stop performance under a Contract if and as directed by Authorized Purchaser.

**5.2.13.3 Rights of The IT HVAR:** IT HVAR may terminate a Contract with a minimum 10 calendar days' prior written notice to Authorized Purchaser, if Authorized Purchaser is in breach of a Contract as described in Section 5.2.11.

**5.2.14 SURVIVAL:** The following provisions survive termination or expiration of a Contract: Sections 5.2.2, 5.2.3, 5.2.8, 5.2.10, 5.2.12, 5.2.15, 5.2.22, 5.2.23.1, 5.2.23.4.

**5.2.15 SEVERABILITY:** If any provision of a Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 a Contract did not contain the particular provision held to be invalid.

**5.2.16 ASSIGNMENT OF ANTITRUST RIGHTS.** IT HVAR irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the IT HVAR now has or which may accrue to the IT HVAR in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the IT HVAR for the purpose of carrying out the IT HVAR's obligations under this Agreement or any Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. IT HVAR shall require any subcontractors hired to perform any of IT HVAR's duties under this Agreement or any Contract to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the IT HVAR in pursuance of this Agreement or any Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

**5.2.17 PRICES:** IT HVAR represents that all prices for Goods under a Contract follow the pricing methodology stated in Exhibit A-3.

**5.2.18 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS:** The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to

initiate or confirm an order of Goods under a Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

- 5.2.18.1** A Contract created by an ordering instrument consists only of the terms specified by this Agreement. Additional, terms and conditions issued by Authorized Purchaser, may not vary the terms of or conflict with the terms of this Agreement. Conflicting terms and conditions on an ordering instrument are of no effect.
- 5.2.18.2** IT HVAR shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates. IT HVAR may, but is not required to accept an ordering instrument that requests delivery schedule of less than any minimum lead time (if any) specified in Exhibit A.
- 5.2.18.3** Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and IT HVAR and include the terms set forth in Section 5.2. As used in the Contracts, “Price Agreement” or “Agreement” means this Agreement.
- 5.2.18.4** DASPS is not obligated or liable under an ordering instrument unless DASPS is purchasing Goods as the Authorized Purchaser.
- 5.2.18.5** Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument.
- 5.2.18.6** IT HVAR shall accept ordering instruments only from Authorized Purchasers under this Agreement. IT HVAR may verify that Authorized Purchasers are ORCPP participants at the following address:  
<http://www.oregon.gov/das/egs/ps/orcpp/orcppmemberlist.pdf>.
- 5.2.18.7** IT HVAR shall reject an ordering instrument that does not meet the requirements of this Agreement.

## **5.2.19 REPRESENTATIONS AND WARRANTIES**

- 5.2.19.1 Officer Status, Insurance:** IT HVAR represents and warrants that it is not an “officer,” “employee,” or “agent” of DASPS or an Authorized Purchaser, as those terms are used in ORS 30.265. IT HVAR represents and warrants that IT HVAR has obtained and will maintain during the term of a Contract all insurance required by the Agreement.
- 5.2.19.2 Warranty on Materials, Design, Manufacture:** DASPS and Authorized Purchaser acknowledge IT HVAR is not the manufacturer of the Goods and that the warranties offered are those of the manufacturer, not IT HVAR or its affiliates. **IT HVAR shall pass through all manufacturer warranties.** To the extent of its knowledge, IT HVAR represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Authorized Purchaser’s remedy with respect to this warranty will be to either (a) allow IT HVAR to use its reasonable commercial efforts to re-perform any Services not in substantial

compliance with this warranty, or (b) refund amounts paid by Authorized Purchaser related to the portion of the Services not in substantial compliance; provided, in each case, Authorized Purchaser notifies IT HVAR in writing within 5 business days after performance of the applicable services. In the case of Services provided by a third party (not an employee, subcontractor or agent of IT HVAR), the third party will be responsible for providing the third party services to Authorized Purchaser, and Authorized Purchaser will look to the third party for any loss, claims or damages arising from or related to the provision of such third party services. With respect to third party services, IT HVAR acts solely as an independent sales agent when collecting any due amounts, including, but not limited to, taxes. EXCEPT AS SET FORTH HEREIN, AND SUBJECT TO APPLICABLE LAW, IT HVAR MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS AND COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF, OR RELATED TO, THE GOODS OR THEIR PERFORMANCE OR NONPERFORMANCE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY SERVICES (NOT PERFORMED BY IT HVAR OR ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS).

**5.2.19.3 Warranty on Service Standards:** IT HVAR warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with standards prevalent in the industry.

**5.2.19.4 Software Warranties:** IT HVAR hereby grants to Authorized Purchaser the following Software warranties:

Authorized Purchaser will receive a license to use the Software, free from any adverse claims asserted by third parties and the Software licensed to Authorized Purchaser will conform to its published documentation and such complete documentation will be delivered to State with the Software.

**5.2.19.5 Warranty of Title:** IT HVAR represents and warrants that all Goods are free and clear of any liens or encumbrances, that IT HVAR has full legal title to the Goods or authority to transfer full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods which is superior to or infringes upon the rights granted to the Authorized Purchaser under a Contract.

**5.2.19.6 Warranty on Safety and Health Requirements:** IT HVAR represents and warrants that Goods provided under this Agreement comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Department of Consumer and Business Services.

**5.2.19.7 Manufacturer Warranties:** IT HVAR shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser, and provide warranty documents to the Authorized Purchaser, at time of

delivery at no charge.

**5.2.19.8 Warranties Cumulative:** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Agreement or in a Contract. All warranties provided in this Agreement or a Contract are cumulative, and are intended to afford DASPS or the Authorized Purchaser the broadest warranty protection available.

## 5.2.20 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS

**5.2.20.1** IT HVAR shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Agreement and any Contract issued hereunder as they may be adopted or amended from time to time.

**5.2.20.2 Statutory Terms:** Authorized Purchaser's performance under a Contract is conditioned upon IT HVAR's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into a Contract by reference. IT HVAR shall, to the maximum extent economically feasible in the performance of a 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)).

**5.2.20.3 Noncompliant Goods:** IT HVAR shall not sell noncompliant goods. In the event noncompliant goods are sold, Authorized Purchaser shall have the right to terminate the Contract and obtain a full refund of all amounts paid without incurring any termination fees if IT HVAR fails to correct any defect in the noncompliant goods within 30 days of receipt of written notice from Authorized purchaser that goods are noncompliant.

In the event of a conflict between the specifications in a Contract and applicable federal or State law, the law prevails.

**5.2.20.4 Recalled Goods or Components:** In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by IT HVAR not to be in compliance with the applicable specifications, IT HVAR shall immediately notify DASPS and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- Cancel any portion of the ordering instrument.
- Reject the Goods.
- Revoke its acceptance of the Goods.
- Require IT HVAR to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- Terminate the Contract.

In the event of rejection or revocation of acceptance under this subsection, IT HVAR shall promptly remove the Goods at its sole cost and expense, and reimburse Authorized Purchaser for any payments made.

**5.2.21 MATERIAL SAFETY DATA SHEET:** IT HVAR shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (MSDS) as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Price Agreement which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, IT HVAR must properly label, tag or mark such Goods. Additionally, IT HVAR shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.

**5.2.22 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS:** If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under a Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under a Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under a Contract.

**5.2.23 INDEPENDENT CONTRACTOR STATUS, RESPONSIBILITY FOR TAXES AND WITHHOLDING:** IT HVAR is an independent contractor. Although the Authorized Purchaser reserves the right

- to determine (and modify) the delivery schedule for the Goods and
- to evaluate the quality of completed performance,

Authorized Purchaser cannot and will not control the means or manner of IT HVAR's performance. IT HVAR is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.

IT HVAR is responsible for all federal and state taxes applicable to compensation or payments paid to IT HVAR under this Contract and, unless IT HVAR is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover IT HVAR's federal or state tax obligations. IT HVAR is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to IT HVAR under this Contract, except as a self-employed individual.

**5.2.24 LICENSE OF OPERATING SYSTEM SOFTWARE:** IT HVAR is an authorized distributor of the operating system software (and documentation and associated manuals) (the "Software"), and is authorized to sell such software to Authorized Purchaser. Authorized Purchaser shall have the right to review the proposed license agreement and negotiate terms with the licensor. If the Authorized Purchaser and licensor cannot reasonably agree to terms, Authorized Purchaser may return the Goods to IT HVAR and IT HVAR shall provide a full refund including any shipping and handling charges and without incurring any termination liability.

**5.2.25 MAINTENANCE AND SUPPORT:** IT HVAR represents that either

- it will, within a reasonable time following Authorized Purchaser's request, enter into an agreement with Authorized Purchaser, upon commercially reasonable terms, for long term maintenance and support; or
- within a reasonable time following Authorized Purchaser's request, IT HVAR will offer Authorized Purchaser the opportunity to enter into a maintenance and support agreement with the manufacturer or other provider, upon commercially reasonable terms.

At a minimum, such maintenance and support agreement will require the entity providing support to be available 24 hours a day, seven days a week, and to respond to Authorized Purchaser's request for support for the Goods within four hours. Such response time shall require the entity providing maintenance and support to make all commercially reasonable efforts to return Authorized Purchaser's phone call requesting support within 30 minutes, and in the case of Goods problems requiring service, to make all commercially reasonable efforts to be at Authorized Purchaser's site within 1 hour maximum. Authorized Purchaser shall have the right to review the proposed agreement and negotiate terms with the provider; upon agreement to the terms Authorized Purchaser will be bound by such agreement. If Authorized Purchaser and provider cannot reasonably agree to terms, Authorized Purchaser may return the Goods to IT HVAR and IT HVAR shall provide a full refund including any shipping and handling charges and without incurring any termination liability.

All subcontractors must be certified or authorized by the original equipment manufacturer to perform maintenance and service on the Goods.

**5.2.26 ACCEPTANCE TEST:** Unless otherwise provided in the Contract, Section 3.4 above controls acceptance of the Goods. However, Authorized Purchaser may specifically provide in a Contract that Authorized Purchaser shall commence acceptance testing on the first day following notification by Authorized Purchaser to IT HVAR that all Goods IT HVAR is required to provide under the Contract have been received and installed and available to be tested as required by this Agreement or any Contract issued hereunder. Authorized Purchaser shall have a 30 calendar day period or such other period as agreed upon by Authorized Purchaser and IT HVAR ("Acceptance Test Period") to test the functionality of the Goods to determine whether they perform in accordance with the specifications and in accordance with the manufacturer's official published specifications ("Acceptance Test Performance Requirements"). The Acceptance Test Performance Requirements shall constitute the acceptance test ("Acceptance Test"). Authorized Purchaser shall accept the Goods if it performs in accordance with the Acceptance Test Performance Requirements.

No later than 5 business days of the completion of the Acceptance Test, Authorized Purchaser shall notify IT HVAR in writing regarding whether the Goods has passed or failed the Acceptance Test. If the Goods pass the Acceptance Test, then such notice shall be deemed "Final Acceptance." If the Goods fail the Acceptance Test, written notice shall be given and include the specific reason(s) for the failures. In the event of failure, IT HVAR shall be entitled to conduct the Acceptance Test, within 10 calendar days of



Authorized Purchaser's notification to verify failure, at IT HVAR's expense. If the Goods pass the Acceptance Test performed by IT HVAR, and Authorized Purchaser does not agree to decree Final Acceptance of the Goods, IT HVAR shall have the option to have Authorized Purchaser return the Goods to IT HVAR at the Authorized Purchaser's expense and refund IT HVAR's shipping costs. Alternatively or in addition to such return, IT HVAR shall be entitled to pursue the remedies available to IT HVAR under the Contract.

**5.2.27 TITLE:** Title for the Goods passes to Authorized Purchaser upon acceptance and payment by Authorized Purchaser to IT HVAR.

## **SECTION 6: EXHIBITS**

- Exhibit A-1 Categories
- Exhibit A-2 Manufacturers
- Exhibit A-3 Pricing Methodology
- Exhibit A-4 Contract Management Services
- Exhibit A-5 Restrictions
- Exhibit B Purchase Order Form
- Exhibit C Vendor Collected Administrative Fee (VCAF) and Volume Sales Report (VSR)
- Exhibit D Insurance

## **SECTION 7: SIGNATURES**

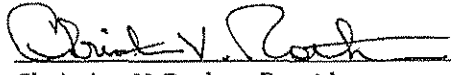
The undersigned represents:

- He/she is a duly authorized representative of IT HVAR, has been authorized by IT HVAR to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of IT HVAR;
- IT HVAR is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- IT HVAR will furnish the Goods in accordance with Contracts under this Agreement; and
- IT HVAR shall furnish federal identification number or social security number under a separate document.

IT HVAR has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that IT HVAR is not in violation of any nondiscrimination laws.

**CDW Government LLC**

**CDW Government LLC**

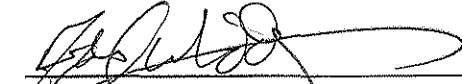


Christina V. Rother, President

9/25/2015

Date

**Department of Administrative Services - Procurement Services**



Toby Giddings, State Procurement Analyst

9/25/2015

Date

**Department of Justice - Approved**

approved via email dated

Karen Johnson, Assistant Attorney General

9/24/2015

Date

# PRICE AGREEMENT: 5603 – IT HVAR – AMENDMENT #1

## SECTION 1: PURPOSE

The purpose of this Amendment between the State of Oregon, acting by and through its Department of Administrative Services Procurement Services (“DASPS”) and CDW Government LLC, an Illinois Limited Liability Company (“IT HVAR”), is to amend Price Agreement (PA) #5603 as identified as follows:

- 1.1 **MODIFICATION OF SECTION 1.2 KEY PERSONS:** To update and replace the State’s Contract Administrator information.
- 1.2 **MODIFICATION OF SECTION 1.4.1:** To extend the price agreement term end date for 90 days to allow more time for further modifications.

## SECTION 2: MODIFICATIONS

*New language is indicated by **bold underlined** font, deleted language is indicated by ~~strikethrough~~ font.*

### 2.1 MODIFICATION OF SECTION 1.2

SECTION 1.2.1 DASPS - modified to replace the State’s Contract Administrator contact information, as follows; **Debbie Davis, State Procurement Analyst, 1225 Ferry Street SE, Salem, OR 97301. (503) 378-5345, debbie.m.davis@oregon.gov.**

### 2.2 MODIFICATION OF SECTION 1.4.1

SECTION 1.4.1 TERM OF AGREEMENT is modified as follows: The initial term of this Agreement begins on the date this Agreement has been signed by DASPS and IT HVAR and all required approvals have been obtained (the “Effective Date”) and ends on ~~September 30, 2017~~ **December 30, 2017** unless sooner terminated or extended as provided in this agreement. DASPS has the option to extend this Agreement. The initial term and all extension terms are collectively referred to as the “Term” of this Agreement.

Except as expressly amended above, all other terms and conditions of the Price Agreement are still in full force and effect. IT HVAR certifies that the representations, warranties and certifications contained in the Price Agreement are true and correct as of

the effective date of this Amendment and with the same effect as though made at the time of execution of the Price Agreement.

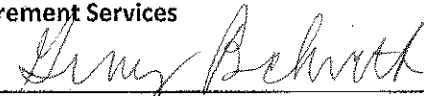
**CONTRACTOR:**

By: 

Date: 9-22-17

Christina V. Rother  
Title: President, CDW-G

**STATE OF OREGON acting by and through its Department of Administrative Services  
Procurement Services**

By:   
Ginny Beckwith

Date: 9/29/17

Title: Procurement Services Manager

**APPROVED PURSUANT TO ORS 291.047  
(Not required if exempt under OAR 137-045-0050)**

By: N/A

Date: Approval via email dated ( )  
(Email filed in official DAS PS PA file)

Title: \_\_\_\_\_

# PRICE AGREEMENT: 5603 – IT HVAR – AMENDMENT #2

## SECTION 1: PURPOSE

The purpose of this Amendment #2 between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services (“DASPS”) and CDW Government LLC, an Illinois Limited Liability Company (“IT HVAR”), is to amend Price Agreement (PA) #5603 as follows:

- 1.1 **MODIFICATION OF SECTION 1.4.1:** To extend the PA term end date for one year.
- 1.2 **MODIFICATION OF SECTION 1.5:** To modify the definition of “Related Services”.

The purpose and intention of this Price Agreement is to provide APs with a price agreement for the purchase of computer and other information technology products, not services. However, the parties understand that some services are inherent or necessary with the purchase and continued ownership and maintenance of the Products. Therefore, the parties wish to clarify the definition of “Related Services” to acknowledge that purpose and intent.

- 1.3 **REPLACEMENT OF EXHIBIT A:** To update and modify definitions, update and replace pricing methodology, and update restrictions page.

## SECTION 2: MODIFICATIONS

The Parties agree as follows (*New language is indicated by **bold underlined font**, deleted language is indicated by ~~strikethrough font~~*):

### 2.1 MODIFICATION OF SECTION 1.4.1

SECTION 1.4.1 TERM OF AGREEMENT is modified as follows:

The initial term of this Agreement begins on the date this Agreement has been signed by DASPS and IT HVAR and all required approvals have been obtained (the “Effective Date”) and ends on ~~September 30, 2017~~ ~~December 30, 2017~~ **December 30, 2018** unless sooner terminated or extended as provided in this agreement. DASPS has the option to extend this Agreement. The initial term and all extension terms are collectively referred to as the “Term” of this Agreement.

### 2.2 MODIFICATION OF SECTION 1.5

SECTION 1.5 DEFINITIONS: Related Services **include simple installation, configuration, training, maintenance and support or other services of the type that an original equipment manufacturer would usually provide or perform for any purchaser in**

**order for the purchaser to install, operate and maintain the Product, but specifically excluding consulting, customizing, or other professional services. Related Services may accompany an initial purchase of Products or Goods or may be included in a renewal of maintenance and support for a specific Product or Good.**

**2.3 REPLACEMENT OF EXHIBIT A**

EXHIBIT A is being replaced in its entirety to update and modify definitions and examples in Exhibit A-1, to lower allowed mark-up in Pricing Methodology on Exhibit A-3, and update restrictions in Exhibit A-5.

Except as expressly amended above, all other terms and conditions of the Price Agreement are still in full force and effect. IT HVAR certifies that the representations, warranties and certifications contained in the Price Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of execution of the Price Agreement.

**CONTRACTOR:**

By: Christ V. Rosta

Date: 12-14-17

Title: President CDW Government

**STATE OF OREGON acting by and through its Department of Administrative Services  
Procurement Services**

By: Ginny Beckwith  
Ginny Beckwith

Date: 12/18/17

Title: Procurement Services Manager

**APPROVED PURSUANT TO ORS 291.047  
(Not required if exempt under OAR 137-045-0050)**

By: Karen J. Johnson

Date: Approval via email dated 11/27/17  
(Email filed in official DAS PS PA file)

Title: Sr. Assistant Attorney General

# IT - PURCHASE ORDER REQUEST #

**Requesting Employee:** Cynthia Klein

**Date** 05/03/18

- Purchase Order Type:**
- Standard PO (1 time goods/materials purchase or contractual service)
  - Amount based goods PO (open PO, maximum \$5,000 for various purchases)
  - Blanket PO (open PO for specified total, no encumbrance until invoice released)
  - Amend PO# \_\_\_\_\_

**Vendor:** CDW-G (ORPIN#5603)

**Vendor  
Tax ID** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Tax Status:**

- Corporation
- Sole Proprietor
- Other:

DESCRIPTION	QTY	EACH	TOTAL
Firewall Replacement Project			0.00
Network Hardware (CIP 18-006)	1	92,150.00	92,150.00
Firewall Services Module (CIP 18-003)	1	53,500.00	53,500.00
Subscription Maintenance	1	34,745.00	34,745.00
			0.00
<b>GRAND TOTAL</b>			<b>\$ 180,395.00</b>

**Ticket Reference:**

<b>Amount:</b> \$ 92,150.00	<b>DIPS</b> 480 80 81 809 8091 Project 080245	<b>Account:</b> 531600
<b>Amount:</b> \$ 53,500.00	<b>DIPS</b> 480 80 81 809 8091 Project 080243	<b>Account:</b> 531600
<b>Amount:</b> \$ 34,745.00	<b>DIPS</b> 580 14 00 142 1412	<b>Account:</b> 525450
<b>TOTAL:</b> \$180,395.00		

**\*\* A purchase order is required prior to any commitment of county funds**

**Purchasing Guidelines:**

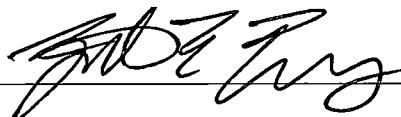
\$ 0 - \$5000	No quotes required
5,001 - 20,000	Three (3) verbal quotes required
20,001 - 99,999	Three (3) written quotes required
\$100,000 +	Formal competitive process (RFP/bid)

*Note: Any commitment over \$100,000 requires pre-approval by County Administrator before purchase can be made or service can begin. A completed review form should be sent to Administration who will to coordinate securing approval. Upon receipt, the review form will be returned to the division for completion of purchase order request form and quotes as applicable.*

**Attachments:**

- Quotes (or RFP/Bid)
- County Administrator review form
- Contract

**Department Head Approval:** \_\_\_\_\_



# QUOTE CONFIRMATION



**DEAR KEN PEARSON,**

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
JSKR643	4/19/2018	PALO	6190557	\$180,395.00

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<b><u>Palo Alto Networks PA-3220 - security appliance</u></b> Mfg. Part#: PAN-PA-3220 UNSPSC: 43222501 Contract: Oregon IT Hardware VAR Contract (5603)	2	5001114	\$16,220.00	\$32,440.00
<b><u>Palo Threat Prevention - subscription license (1 year) - 1 device in HA pair</u></b> Mfg. Part#: PAN-PA-3220-TP-HA2 UNSPSC: 43233204 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)	2	5003922	\$2,300.00	\$4,600.00
<b><u>Palo PANdb URL Filtering - subscription license (1 year) - 1 device in HA pair</u></b> Mfg. Part#: PAN-PA-3220-URL4-HA2 UNSPSC: 43233205 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)	2	5003727	\$2,300.00	\$4,600.00
<b><u>WildFire - subscription license (1 year) - 1 device in HA pair</u></b> Mfg. Part#: PAN-PA-3220-WF-HA2 UNSPSC: 43233204 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)	2	5003730	\$2,300.00	\$4,600.00
<b><u>Palo Premium Support Program - extended service agreement - 1 year - shipme</u></b> Mfg. Part#: PAN-SVC-PREM-3220 UNSPSC: 81111812 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)	2	5001120	\$0.00	\$0.00
<b><u>Palo Alto Networks PA-5220 - security appliance</u></b> Mfg. Part#: PAN-PA-5220-AC UNSPSC: 43222501 Contract: Oregon IT Hardware VAR Contract (5603)	2	4477677	\$42,305.00	\$84,610.00
<b><u>Palo Threat Prevention for PA-5220 - subscription license (1 year) - 1 devi</u></b> Mfg. Part#: PAN-PA-5220-TP-HA2 UNSPSC: 43233204 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)	2	4477601	\$6,310.00	\$12,620.00



**QUOTE DETAILS (CONT.)**

<b><u>Palo Premium Support Program - extended service agreement - 1 year - shipme</u></b>	2	4788434	\$0.00	\$0.00
Mfg. Part#: PAN-SVC-PREM-5220 UNSPSC: 81111812 Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo network cable - 33 ft</u></b>	1	3350915	\$1,630.00	\$1,630.00
Mfg. Part#: PAN-QSFP-AOC-10M UNSPSC: 26121609 Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo - SFP+ transceiver module - 10 GigE</u></b>	4	2687525	\$1,360.00	\$5,440.00
Mfg. Part#: PAN-SFP-PLUS-SR UNSPSC: 43201553 Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Panorama Centralized Management - license</u></b>	1	2514035	\$7,500.00	\$7,500.00
Mfg. Part#: PAN-PRA-25 UNSPSC: 43232804 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo Premium Support Program - technical support - for Panorama - 1 year</u></b>	1	3133946	\$0.00	\$0.00
Mfg. Part#: PAN-SVC-PREM-PRA-25 UNSPSC: 86101601 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo Alto 5M 10GBASE-CU SFP+ Transceiver Passive</u></b>	1	3565057	\$455.00	\$455.00
Mfg. Part#: PAN-SFP-PLUS-CU-5M Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo PA-220 - security appliance</u></b>	15	4477661	\$905.00	\$13,575.00
Mfg. Part#: PAN-PA-220 UNSPSC: 43222501 Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo Threat Prevention for PA-220 - subscription license (1 year) - 1 licen</u></b>	15	4477533	\$185.00	\$2,775.00
Mfg. Part#: PAN-PA-220-TP UNSPSC: 43233205 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo PANdb URL Filtering for PA-220 - subscription license (1 year) - 1 dev</u></b>	15	4477840	\$185.00	\$2,775.00
Mfg. Part#: PAN-PA-220-URL4 UNSPSC: 43233205 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>WildFire for PA-220 - subscription license (1 year) - 1 device</u></b>	15	4477841	\$185.00	\$2,775.00
Mfg. Part#: PAN-PA-220-WF UNSPSC: 43233204 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)				
<b><u>Palo Premium Support Program - extended service agreement - 1 year - shipme</u></b>	15	4477843	\$0.00	\$0.00
Mfg. Part#: PAN-SVC-PREM-220 UNSPSC: 81111812 Electronic distribution - NO MEDIA Contract: Oregon IT Hardware VAR Contract (5603)				

<b>PURCHASER BILLING INFO</b>	<b>SUBTOTAL</b>	\$180,395.00
<b>Billing Address:</b> MARION CTY INFORMATION TECHNOLOGY ACCTS PAYABLE PO BOX 14500 SALEM, OR 97309-5036 <b>Phone:</b> (503) 584-7726 <b>Payment Terms:</b> Net 30 Days-Govt State/Local	<b>SHIPPING</b>	\$0.00
	<b>GRAND TOTAL</b>	<b>\$180,395.00</b>
<b>DELIVER TO</b>	<b>Please remit payments to:</b>	
<b>Shipping Address:</b> MARION COUNTY IT KEN PEARSON 555 COURT ST NE STE 4130 SALEM, OR 97301-3980 <b>Shipping Method:</b> DROP SHIP-GROUND	CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	

Need Assistance? CDW•G SALES CONTACT INFORMATION

	Danny Moore		(866) 339-7080		dannmoo@cdwg.com
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For more information, contact a CDW account manager  
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FY 17-18 CIP List

- Fund 480 is Capital Improvement Fund

- Fund 455 is Facility Renovation Fund

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Dept	Key	Project Name	CIP #	Fund	Dept	Div	Prog	Service	Account	Project	Budget	Comment
IT	N	JAIL MATRIX CONTROLLER	18-013	480	80	81	804	8042	531300	080230	300,000	
IT	N	COURTHOUSE SECURITY CAMERA MATRIX	18-007	185	70	72	732	7303	531300	000000	100,000	Budgeted in Court Security
IT	CF	DACMS (DA'S CASE MGMT SW)	16-017	480	80	81	804	8042	531700	080169	625,962	
IT	CF	ANIMAL MGMT SOFTWARE	16-013	480	80	81	804	8042	531700	080195	140,000	
IT	CF	FIMS SERVERS (CF)	16-012	480	80	81	804	8042	531600	080206	80,000	This project expended in FY 16-17. Will cancel.
IT	N	NETWORK OF CARE PORTAL	18-014	480	80	81	804	8042	531700	080227	30,000	
IT	N	TRAFFIC SIGNAL/FIBER CONNECT	18-001	480	80	81	804	8042	531300	080231	134,000	
IT	N	FIBER OPTIC BACKBONE	18-002	480	80	81	804	8042	531300	080232	36,537	
IT	N	JAIL MGMT SYSTEM (RMS/JMS)	18-008	480	80	81	804	8042	531300	080233	250,000	
IT	N	SECURITY SYSTEM LOG SOFTWARE	18-010	480	80	81	804	8042	531700	080234	90,000	
IT	N	JAIL VIDEO STORAGE (PREA)	18-011	480	80	81	804	8042	531600	080235	220,000	
IT	N	GIS BLDG LAYER (BLDG OUTLINES/ASSR)	18-012	480	80	81	804	8042	531600	080236	17,500	
IT	CF	HEALTH PHONE MATRIX	16-001	480	80	81	804	8043	531800	080202	285,000	
IT	N	FIMS INFRASTRUCTURE SERVERS	18-004	480	80	81	809	8091	531600	080241	70,000	
IT	N	PASSWORD SAFE SOFTWARE	18-009	480	80	81	809	8091	531700	080242	15,000	
IT	N	FIREWALL SVCS MODULE REPL	18-003	480	80	81	809	8091	531600	080243	53,500	
IT	N	IT SERVER REPLACEMENT	18-005	480	80	81	809	8091	531600	080244	70,000	
IT	N	NETWORK HARDWARE REPL	18-006	480	80	81	809	8091	531600	080245	93,000	
IT	CF	SO VIDEO RECORDING SYSTEM/PATROL	16-005	255	31	32	323	3210	531300	000000	75,000	Budgeted in Sheriff Department
IT	N	SO RECORDING SYSTEM	18-072	250	31	32	322	3204	531300	032007	12,000	Budgeted in Sheriff Department
IT	N	SO COGENT FINGER PRINTING MACHINE	18-073	250	31	31	311	3103	531300	000000	7,500	Budgeted in Sheriff Department

SO	N	JAIL INDUSTRIAL OVEN	18-066	480	80	81	804	8041	531300	080238	7,000	
SO	N	JAIL WASHER	18-069	480	80	81	804	8041	531300	080239	13,000	
SO	N	JAIL DRYER	18-068	480	80	81	804	8041	531300	080239	7,000	
SO	N	TRANSITION CTR WASHER	18-067	480	80	81	804	8041	531300	080240	13,000	

Key:

