



Participating Addendum Number [#####]
for
Equipment Rental Services- Standard and Emergency
between
State of Oregon
and
[Contractor]

This Participating Addendum (also referenced as “Addendum”) is entered into by the State of Oregon Department of Administrative Services (DAS) Procurement Services on behalf of State Agencies and ORCPP members (each a “Participating Entity”) and the following Contractor for the purpose of participating in NASPO ValuePoint Master Agreement Number [#####], executed by Contractor and the State of Kentucky (Lead State) for **Equipment Rental Services- Standard and Emergency** (Master Agreement):

[Contractor] (Contractor)
[Contractor street address]
[Contractor city, state, and zip code]

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor’s contact for this Participating Addendum is:

[Contact name]
[Contact title]
[Contact email address]
[Contact phone number]

Participating Entity’s contact for this Participating Addendum is:

Kaliska King, CPPB, OPBC
Procurement Analyst
P: 503.798.1907
E: Kaliska.king@das.oregon.gov

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below and will terminate upon termination of the Master Agreement (including as amended), unless this Participating Addendum is terminated sooner in accordance with its terms.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity’s use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. Products and Services.** All products and services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities, with the exception of legal services subject to ORS 180.220(1)(b), which grants the Attorney General full charge and control of all the legal business of all departments, commissions and bureaus of the State, or of any office of the State.
 - i. Purchasing Entities subject to the restriction in ORS 180.220(2), which prohibits State officers, boards, commissions, and agencies and institutions from employing counsel other than the Attorney General, may not place an Order attorney or legal counsel Services through this Addendum.
 - b. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.
 - c.** Any amendment to the Master Agreement will be deemed incorporated into this Participating Addendum, to the extent the amendment does not conflict with Exhibit 1 of this Addendum or applicable law or administrative rule, unless the amendment is rejected by Participating Entity in writing to Contractor within ten calendar days of the amendment's effective date, and this Participating Addendum amended to reflect the rejection. The parties may enter into a written amendment of this Participating Addendum that reflects the otherwise-rejected Master Agreement.
 - d. Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.** The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to its parties and have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.
- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth in this Participating Addendum, including Exhibit 1, and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.

Contractor shall submit volume sales reports to Participating Entity and shall pay an administrative fee of two percent (2%) as set forth in:

<https://www.oregon.gov/das/Procurement/Documents/VSRandVCAInstructions.docx>

VIII. INFORMATION TECHNOLOGY STANDARDS. Purchasing Entity data, activities, or systems related to an Order may have additional requirements under law, administrative rule, policy, or contract that must be satisfied under an Order. Contractor shall comply with all applicable requirements under law, administrative rule, policy, or contract that relate to the Order. By accepting the Order, Contractor agrees it has an affirmative duty to identify and shall comply with all requirements related to Purchasing Entity data, activities, or systems, including as set forth in an Order, in law or rule, in written policy, or as otherwise provided to Contractor.

IX. ATTACHMENTS. This Participating Addendum includes the following exhibits which in the event of a conflict with each other or with the terms of this Participating Addendum, will be interpreted in the following order:

- 1) This Participating Addendum, less its exhibits.
- 2) Exhibit No. 1, Participating Entity Modifications and Additions to Master Agreement
- 3) Exhibit No. 4, Federal Terms and Conditions.
- 4) Exhibit No. 2, Insurance Requirements.
- 5) Exhibit No. 3, Contractor Data.
- 6) Exhibit No. 5, Sample Statement of Work for State Agencies.

X. NOTICE. Any notice required herein must be sent to the following:

For Contractor:

[Contact name]
[Contact title]
[Contact email address]
[Contact phone number]

For Participating Entity:

Kaliska King, CPPB, OPBC
[Contact title]
[Contact email address]
P: 503.798.1907

XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the party hereto. Contractor certifies the information provided on Exhibit No. 3 is true and correct to the best of its knowledge.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum.

CONTRACTOR:

Signature: _____ Date: _____

Printed Name, Title: _____

Federal Tax ID: _____ Oregon Tax ID: _____

PARTICIPATING ENTITY:

State of Oregon, acting through the Department of Administrative Services, Procurement Services on behalf of State Agencies and ORCPP members

Signature: _____ Date: _____

Printed Name, Title: _____

EXHIBIT NO. 1

Participating Entity Modifications and Additions to Master Agreement

1. Incorporation of Master Agreement. Participating State and Purchasing Entities are intended beneficiaries of the Master Agreement and are entitled to rely upon all of the representations and warranties, rights, remedies, and benefits under the Master Agreement and this Participating Addendum, subject to the State-Specific Constitutional, Statutory and other requirements set forth in this Participating Addendum.

2. Definitions. Capitalized terms not defined in this Participating Addendum have the meaning ascribed to them in the Master Agreement (including its exhibits). The following terms have the meanings set forth below, and apply to this Participating Addendum:

“ORCPP” is the State of Oregon’s Cooperative Purchasing Program. ORCPP members are authorized to use DAS PS statewide agreements. ORCPP members include: State Agencies not subject to DAS PS purchasing authority, cities, counties, school districts, special districts, Qualified Rehabilitation Facilities (QRFs), residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, and American Indian tribes or agencies.

“State” means the State of Oregon.

“State Agency” or “State Agencies” means boards, commissions, departments, or agencies of the State of Oregon, whose costs are paid, in whole or in part, from funds held in the State Treasury.

3. Award of Participating Addenda; Selection of Contractor.

3.1 Award of Participating Addenda. In the event of a multiple award of Master Agreements under the Solicitation, the State of Oregon intends to enter into a Participating Addendum with one or more of the awardees of Master Agreement. The State of Oregon may elect not to enter into a Participating Addendum with each of the awardees. In the event the State elects not to enter into a Participating Addendum with each of the awardees, after applying all applicable State preferences, the State of Oregon may enter into a Participating Addendum with the three highest ranked Proposers who provide Products or Services on a national level, and in addition the State of Oregon may enter into a Participating Addendum with the three highest ranked Proposers who provide Products or Services in the State of Oregon only.

3.2 Purchasing Entity Selection of Contractor. This section modifies Section 7.2 of the Master Agreement for State Agencies. In the event the State elects to enter into a Participating Addendum with more than one of the awardees of Master Agreements, a Purchasing Entity under this Participating Addendum that is a State Agency must apply all applicable State preferences and use one the following processes to make its selection of a provider among the holders of Participating Addenda. A Purchasing Entity that is not a State Agency should follow its applicable rules and policies. Each Purchasing Entity must document its selection process in its procurement file.

A State Agency Purchasing Entity may:

3.2.1 *For Contracts under \$25,000*, Purchasing Entity may directly award a Contract to the contractor of Purchasing Entity’s choice.

3.2.2 *For Contracts over \$25,000*, Purchasing Entity may EITHER:

- 1) Sole Source/Brand Name Justification: Purchasing Entity may directly award a Contract to the contractor in compliance with the applicable statutes and rules documenting a sole source or brand name;
OR
- 2) Best Value Analysis: Purchasing Entity may submit the minimum specifications to contractors holding a Participating Addendum as a request for quote(s) for available options, and award a Contract to the Contractor whose quote is determined to be the best value to Purchasing Entity based on an evaluation of at least the following criteria:
 - i. Price
 - ii. Availability

iii. Past performance

iv. Ability to deliver scope of desired Services and Products.

OR

1. Highest Ranked Proposer in RFP that holds a Oregon Participating Addendum: Purchasing Entity may issue Orders or contracts for Products to the awardee who received the highest total points in response to the RFP and was awarded a Participating Addendum in Oregon;

OR

2. Highest Ranked Proposer in Market Basket Comparison: Purchasing Entity, on an annual basis (beginning upon the Effective Date of the Participating Addendum and then on each anniversary date thereafter) may make a selection to be effective for the entire contract year period, as follows:
 - a. Purchasing Entity creates its own market basket comprised of up to 100 most-used products;
 - b. Purchasing Entity defines the criteria most important to it in the selection of a provider, such as: price, functionality, accounting/invoicing issues, use, availability, past performance;
 - c. Purchasing Entity obtains prices for the market basket items from each of the providers;
 - d. Purchasing Entity evaluates and scores the market basket from each provider; and
 - e. Purchasing Entity acquires the products from the highest-ranking provider from its market basket scoring.

OR

3. Cost Comparison: Purchasing Entity may conduct a product-specific comparison based upon price.

4. Orders. Orders are generally addressed in Section 7 of the Master Agreement. An Order may include a Statement of Work. For State Agencies, a sample Statement of Work is attached to this Addendum as Exhibit No. 5.

4.1 Eligible Purchasing Entities. All State Agencies under DAS procurement authority; and all State Agencies with their own procurement authority, institutions of higher institution, political subdivisions and other entities that are members of the Oregon Cooperative Purchasing Program (ORCPP), are eligible to acquire Products and Services under this Addendum.

4.2 DAS Purchasing Threshold. Purchasing Entities that are State Agencies under DAS procurement authority may issue ordering instruments under this Addendum for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Purchasing Entities that are State Agencies must obtain all other necessary approvals, including but not limited to EIS and legal sufficiency approval, as may be required.

4.3 Verification of Purchasing Entities. Contractor shall verify that it provides Products and Services under this Addendum only to eligible Purchasing Entities. Contractor may verify that a particular entity is an ORCPP member on-line at

<http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

4.4 Effect of Orders. The State is only liable for purchases under Orders issued by State Agencies. Other Purchasing Entities are responsible for any purchases under Orders they issue. DAS is not obligated or liable under an Order unless DAS is the Purchasing Entity. The State expressly disclaims any liability for purchases made by non-State Agency Purchasing Entities or any other entity.

5. Insurance. Contractor shall provide at least the insurance required under Exhibit 2 as a part of each Order. A Purchasing Entity may require additional insurance coverage in an Order. Within 10 Days of the effective date of this Participating Addendum, Contractor shall deliver to DAS a certificate evidencing the insurance coverage set forth on Exhibit No. 2. No Orders may be placed or accepted until proof is provided that these requirements have been met.

6. Federal Funding Requirements. Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds, and may incorporate Exhibit No. 4 in whole or in part in an Order. By accepting the Order, Contractor agrees to comply with the requirements related to the use of federal funds.

7. Software and Online Services. To the extent any Products or Services are subject to the provisions of a software license agreement, third party license agreement, subscription agreement, maintenance and support agreement or any other terms for software or online services, Contractor shall provide Purchasing Entity with a copy of any such terms. Purchasing Entity will have 30 calendar days to review the agreement. Purchasing Entity may accept the terms of the agreement, reject the terms, or attempt to negotiate the terms. In the event Purchasing Entity rejects the terms or is unable to come to agreement with the software or online services provider, Purchaser Entity may revoke the Order and will be entitled to a full refund of all amounts paid and will not be subject to any early termination fees. This Addendum may be amended to include terms for software or online services

8. Security and Data Privacy Laws. In addition to the confidentiality provisions set forth in the Master Agreement, Contractor and all Contractor employees, contractors, and agents shall comply with all applicable state and federal laws and regulations, and Purchasing Entity policies, governing use and disclosure of a Purchasing Entity's data and access to its networks and information assets, including as those laws, regulations, and policies may be updated from time to time. Contractor shall affirmatively identify and shall comply with all requirements related to Purchasing Entity data, activities, or systems. Applicable laws, regulations, and policies include but are not limited to:

1. The Oregon Consumer Information Protection Act, ORS 646A.600 through 646A.628.
2. Those specified in an Order.

3. Those otherwise provided to Contractor.

9. Payment Provisions; Expenses. All payments are subject to ORS 293.462. Purchasing Entity will not be obligated to pay any travel expenses unless expressly agreed upon in an Order. Any obligation to pay travel expenses, including transportation, lodging, or meals, is subject to the rates and limitations set under Oregon law. Contracts with the State of Oregon are subject to the rates and limitations of the Statewide Travel Policy, currently found online at: <http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

10. Funds available and authorized/non-appropriation. The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Purchasing Entity receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Order issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Order from any part of Oregon state government other than Purchasing Entity. Nothing in this Addendum or Order is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Order issued under this Addendum.

11. Warranties. Purchasing Entities are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum. The warranties set forth the Master Agreement are in addition to, and not in lieu of, any other warranties provided by law. All warranties are cumulative and will be interpreted expansively so as to afford Purchasing Entity the broadest warranty protection available.

12. Dispute Resolution. Any dispute between the parties under this Addendum that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes. Neither party waives its right to a jury trial or right to participate in class, collective, or representative claims.

13. Control of Defense and Settlement. Contractor's obligation to indemnify Purchasing Entity as set forth in the Master Agreement is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity becomes aware. Contractor will have control of the defense and settlement of any claim that is subject to indemnification; however, neither Contractor nor any attorney engaged by Contractor may defend the claim in the name of the State of Oregon or any Purchasing Entity of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor may Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event it determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important

governmental principle is at issue and the State of Oregon desires to assume its own defense.

14. Limitation of Liability; Exclusions.

The Participating Entity's or a State Agency Purchasing Entity's indemnification obligations to Contractor, if any, are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

15. Jurisdiction and Venue.

- 15.1** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or an Order under this Addendum, must be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF AN ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or federal law, or the consent to jurisdiction in State or federal court.
- 15.2** Any Claim between Contractor and an Purchasing Entity other than the State of Oregon or a State Agency that arises from or relates to an Order or this Addendum must be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Purchasing Entity resides or has its principal office, or at Purchasing Entity's option, within such other county as Purchasing Entity will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

16. Remedies. If any Products or Services furnished by Contractor are, in Contractor's opinion, likely to become the subject of an Infringement Claim, or if an Purchasing Entity is prevented from exercising its rights under this Addendum based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, procure for the Purchasing Entity the right to continue using the allegedly infringing Products or services, or replace or modify the Products or services so that they become non-infringing; provided that the replacement or modified good or service meets the specifications set forth in the applicable Order to the satisfaction of the Purchasing Entity. If the foregoing remedies are not available, then Purchasing Entity will return the allegedly infringing Products or terminate the allegedly infringing services, and Contractor will refund Purchasing Entity's payments, in full, for the allegedly infringing Products or services.

17. Termination of Participating Addendum.

In addition to its termination rights under the Master Agreement, DAS may terminate this Addendum, in whole or in part, at any time upon 30 Days prior written

notice to Contractor.

18. Termination of Individual Orders. In addition to its termination rights under the Master Agreement, Purchasing Entity may, at its sole discretion, terminate individual Orders, in whole or in part, upon 30 Days written notice to Contractor, or Purchasing Entity and Contractor may agree to terminate a Order at any time by written consent.

19. Governing 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 Addendum and resulting Orders, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

20. Compliance with Law.

20.1 General. In addition to the compliance of law provisions of the Master Agreement, Contractor shall comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to Contractor or to the Products or Services ordered under this Addendum or any Order, as may be modified or adopted from time to time. Further, a Purchasing Entity's performance under an Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230. and 279B.270.

20.2 Pay Equity. Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, gender identity, or age. Contractor's compliance with this section constitutes a material element of this Addendum and a failure to comply constitutes a breach that entitles DAS or Purchasing Entity to terminate this Addendum or an Order for cause.

20.2.1 Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

20.3 False Claims. Contractor understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Addendum, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Addendum or the Orders, including but not limited to Contractor invoices, correspondence, reports, or other deliverables.

20.4 Non-Discrimination. Contractor certifies that it has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material condition, to maintain such policy and practice in force during the term of this Addendum and

each Order.

20.5 Undisclosed Debt; Tax Compliance and Certification. By executing this Addendum, the undersigned certifies under penalty of perjury that, to the best of the individual's knowledge, Contractor has no undisclosed liquidated and delinquent debt owed to the State or any of its agencies, boards, commissions, departments or divisions, and Contractor complied with the tax laws of the State and the applicable tax laws of any political subdivision of this state, and Contractor shall, for the term of this Addendum and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this State. For the purposes of this section, "tax laws" includes: (i) All tax laws of the State, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that apply to Contractor, or to Products, Services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any violation of this provision will be considered a material breach of this Addendum and applicable Orders. DAS and Purchasing Entity, as applicable, may pursue any and all remedies set forth in the Master Agreement, including termination of this Addendum or an Order.

20.5.1 This Addendum and Orders by State Agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes and debt due to the State of Oregon or a political subdivision, including (i) garnishing Contractor's compensation under Orders placed through this Addendum, or (ii) exercising a right of setoff against Contractor's compensation relating to this Addendum for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

21. Application of Public Records Law. Participating State and Purchasing Entity's obligations of confidentiality, if any, are subject to the Oregon Public Records Law, including but not limited to ORS 192.311 to 192.478, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475.

22. Recycled Products. To the maximum extent economically feasible in the performance of this Addendum or any Order, Contractor will 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)).

23. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Addendum or any Order. An Purchasing Entity may withhold final payment under an Order until Contractor has provided

the Oregon Department of Revenue with the required information.

24. Independent Contractor. Contractor certifies that it is an independent contractor and at all times shall act as an independent contractor and not as an agent or employee of Purchasing Entity. Contractor has no right or authority to incur or create any obligation for or legally bind Purchasing Entity in any way. Contractor is not an "officer", "employee", or "agent" of Purchasing Entity (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

25. Access to Records. Contractor will maintain all fiscal records relating to Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Orders in such a manner as to clearly document Contractor's performance thereunder. The Purchasing Entity, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Purchasing Entities. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

EXHIBIT NO. 2 INSURANCE

In addition to the insurance coverage requirements set forth in the Master Agreement, Contractor shall obtain at Contractor's expense the additional insurance coverages specified in this Exhibit No. 2 prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall obtain the required insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self- insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY. All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Addendum including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

AUTOMOBILE LIABILITY INSURANCE. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage.

PROFESSIONAL LIABILITY. Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Addendum in an amount not less than \$ 1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance required under this Addendum shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Addendum.

TAIL COVERAGE. If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Addendum, for a minimum of 24 months following the later of (i) Contractor's completion and DAS' acceptance of all Services required under this Addendum, or, (ii) The expiration of all warranty periods provided under this Addendum.

CERTIFICATE(S) AND PROOF OF INSURANCE. Contractor shall provide to DAS Certificate(s) of Insurance for all required insurance before delivering any Products and performing any Services required under this Addendum. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance DAS has the right to request copies of insurance policies relating to the insurance requirements in this Addendum.

NOTICE OF CHANGE OR CANCELLATION. Contractor or its insurer must provide at least 30 Days' written notice to DAS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW. Contractor agrees to periodic review of insurance requirements by DAS under this Addendum and to provide updated requirements as mutually agreed upon by Contractor and DAS.

**EXHIBIT NO. 3
CONTRACTOR DATA**

Contractor Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): _____

Street address: _____

City, state, zip code: _____

Email address: _____

Telephone: () _____ Fax: () _____

Contractor's taxpayer identification numbers;

Federal Tax Number _____ Oregon Tax Number _____

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): ☐ YES ☐ NO

Business Designation: (Check one box):

- | | | |
|--|--|--|
| ☐ Professional Corporation | ☐ Nonprofit Corporation | ☐ Limited Partnership |
| ☐ Limited Liability Company | ☐ Limited Liability Partnership | ☐ Sole Proprietorship |
| ☐ Corporation | ☐ Partnership | ☐ Other |

EXHIBIT NO. 4

FEDERAL PROVISIONS

Contractor shall comply with all applicable federal law, regulations and executive order, as indicated, and shall cause all applicable subcontractors to comply with all federal law, regulations and executive order including the following. For purposes of this Master Agreement, all references to federal laws are references to federal laws as they may be amended from time to time.

1. Equal Employment Opportunity. If this Master Agreement, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). The Executive Order prohibits contractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

During the performance of the Master Agreement, Contractor agrees as follows:

- 1.1 Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 1.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 1.3 Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
- 1.4 Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 1.5 Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 1.6 Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and Request for Services.
- 1.7 In the event of Contractor's noncompliance with the nondiscrimination clauses of this Master Agreement or with any of the said rules, regulations, or Request for Services, this Master Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further

Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Request for Services 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Request for Services 11246 of September 24, 1965, or by rule, regulation, or Request for Services of the Secretary of Labor, or as otherwise provided by law.

- 1.8** Contractor will include the portion of the sentence immediately preceding subsection 1.1 and the provisions of subsection 1.1 through subsection 1.8 in every subcontract or purchase Request for Services unless exempted by rules, regulations, or Request for Services of the Secretary of Labor issued pursuant to section 204 of Executive Request for Services 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase Request for Services as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Clean Air Regulations. Contractor agrees:

- a. It will not use any facilities listed on the US EPA list of violating Facilities”;
- b. It will report the sue of facilities place on the or likely to be placed on the US EPA “list of Violating Facilities”.
- c. It will report violations of use of prohibited facilities to FTA; and
- d. It will comply with rhea inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. 7401-7671q); and he Federal Water pollution Control Act, as amended (33 U.S.C 1251-1387)
- e. It will include the substance of this clause in all agreements or subcontractors in excess of \$150,000 with subcontractors at every tier, including this requirement to flow down the clause.

3. Solid Waste Disposal Act. Contractor shall comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act.

4. EPA Regulations. Contractor shall comply with all applicable standards, Request for Services, or requirements under Executive Request for Services 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the State, HHS, and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

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

6. Recycled Materials. To the extent practicable, shall use products containing recovered materials that are EPA-designated items in it performance of this Agreement unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Contract performance schedule, (ii) meeting Contract performance requirements, or (iii) at a reasonable price.

7. Energy Efficiency. Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163).

8. Byrd Anti-Lobbying Amendment; Truth in Lobbying. This Act prohibits the recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110. Contractor certifies, to the best of the Contractor's knowledge and belief that:

- 8.1.** No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- 8.2.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 8.3.** Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure.

9. Substance Abuse Prevention and Treatment and Drug Free Workplace. Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64). In addition, the Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, Contractor acknowledges the following:

- 9.1.** The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace.
- 9.2.** Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- 9.3.** Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.

- 9.4.** Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy of the State of Oregon that abuse of this drug will also not be tolerated in the workplace.

Contractor certifies that will provide drug-free workplaces for their employees.

10. Access to Records; Audits. Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled “Audits of States, Local Governments and Non-Profit Organizations.” Contractor shall provide the State of Oregon, Purchasing Entity, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcripts. Contractor shall permit the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. If applicable, Contractor shall provide the FEMA Administrator or his authorized representatives access to construction sites pertaining to the work being completed under the Contract. Contractor and Purchasing Entity acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States. Audits and inspections are limited to twice per year, after providing 10 days’ prior written to Contractor.

11. Debarment and Suspension. Contractor shall comply and shall cause its subcontractors to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Non-procurement Programs” in accordance with Executive Orders No. 12,549 and No. 12,689, “Debarment and Suspension”. (See 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, Contractor principles as defined in 2 C.F.R. §180.995 or its affiliates, as defined in 2 C.F.R. §180.905.). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549 (excluded as defined in 2 C.F.R. §180.940 or disqualified as defined in 2 C.F.R. §180.935). Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor certifies:

- 11.1.** Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- 11.2.** Contractor has not within a three-year period preceding the Effective Date of this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 11.3.** Contractor is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in subsection, 16.2 of this certification; and
- 11.4.** Contractor has not within a three-year period preceding the Effective Date of this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

12. Americans with Disabilities Act. Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work. This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation services.

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

14. Federal Tax Information. Contractor shall comply with the provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. §552a et. seq. related to federal tax information.

15. US Patriot Act of 2001. Contractor shall comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (US PATRIOT Act), which amends 18 U.S.C. section 175-175c.

16. Rehabilitation Act of 1973. Contractor shall comply with requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, as amended.

17. Trafficking Victims Protection Act of 2000. Contractor shall comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking of Victims Protection Act of 2000 (TVA), as amended by 22 U.S.C. section 7104.

18. Age Discrimination Act. Contractor shall comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. C. section 6101 et. seq.).

19. Use of Logos. Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of agency officials without specific FEMA pre-approval.

20. False Statements. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Contract.

21. General Provisions. The Federal government is not a party to this Contract and is not subject to any obligations or liabilities to Purchasing Entity, Contractor or any other party pertaining to any matter resulting from the Contract.

EXHIBIT NO. 4, APPENDIX 1

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the contractor named below (hereinafter referred to as “Contractor”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Contractor’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Contractor may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Contractor’s program(s) and activity(ies), so long as any portion of the Contractor’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Contractor acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Contractor’s programs, services, and activities.

3. Contractor agrees to consider the need for language services for LEP persons when Contractor develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided.
5. Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Contractor and the Contractor's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits contractors or recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Participating Addendum and Order (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Participating Addendum and Order or agreement.

6. Contractor understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Contractor, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property.
7. Contractor shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Contractor shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Contractor shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English

proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Contractor also must inform the Department of the Treasury if Contractor has received no complaints under Title VI.

9. Contractor must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Contractor and the administrative agency that made the finding. If the Contractor settles a case or matter alleging such discrimination, the Contractor must provide documentation of the settlement. If Contractor has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Contractor makes sub-awards to other agencies or other entities, the Contractor is responsible for ensuring that sub-contractors also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-Contractors.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Contractor's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Contractor is in compliance with the aforementioned nondiscrimination requirements.

Contractor:

Date:

By: _____

**Exhibit No. 5: Sample Statement of Work for State Agencies
to Purchase Order #**

This Statement of Work (SOW) is part of the contract between [name] (Contractor) and the State of Oregon, acting through its [name] ("Purchasing Entity" or "Agency") This SOW is entered into under [PA number] and part of Order [PO#].

Contractor and Purchasing Entity agree:

- 1. Applicability.** This SOW pertains to the provision of notification and credit monitoring services relating to [incident short description and date], as described in Attachment 1 to this SOW. Contractor shall provide Services in accordance with this Purchase Order, inclusive of this Statement of Work, the Oregon Participating Addendum, and the Master Agreement.
 - 1.1. No payment will be made for services or other charges that exceed the maximum amount payable under the PO unless the maximum additional amount payable is agreed upon in advance in a duly executed amendment.
 - 1.2. Any Purchasing Entity obligation to pay travel expenses, including transportation, lodging, or meals, is subject to the rates and limitations of the Statewide Travel Policy, currently found online at: <http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.
- 2. Agency Data.**
 - 2.1. **Ownership of Agency Data.** Any information Contractor or its employees or agents receives or creates relating to Agency or Agency's clients (Agency Data) is owned by Agency. Agency hereby grants Contractor a license to use Agency Data to fulfill the purposes of this Order, and otherwise only as specifically described in this Order, Oregon's Participating Addendum and the Master Agreement.
 - 2.2. **Limited Purposes.** Contractor shall limit the use or disclosure of Agency Data to persons directly connected with the services delivered by Contractor and the administration of this SOW.
 - 2.3. **No Overseas Access, Storage, or Transmission.** Agency Data will not be accessed from, transmitted, or stored outside of the United States or its territories, including for any maintenance, support, disaster recovery, or data backup.
 - 2.4. **Prohibition on Data Mining.** Contractor shall not capture, maintain, scan, index, share or use Agency Data, or otherwise use any data-mining technology, for any non-authorized activity, and shall not permit its agents or subcontractors to do so. For purposes of this requirement, "non-authorized activity" means data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this SOW.
 - 2.5. **Privacy and Security Measures.** Contractor represents and warrants it has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security, and privacy of Agency Data.

Contractor shall monitor, periodically assess, and update its physical, technical, and logical security controls and risk to ensure continued effectiveness of those controls.

- 3. Compliance with Laws, Regulations, and Policies.** Contractor represents and warrants it and all Contractor employees, contractors, and agents comply with all applicable state and federal laws and regulations, and State of Oregon policies governing use and disclosure of Agency Data [and access to State of Oregon information assets], including as those laws, regulations, and policies may be updated from time to time. Applicable laws, regulations, and policies include but are not limited to:

- 3.1. Oregon's Statewide Information Security Standards, found online at: <https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspxf>.
- 3.2. Oregon's Statewide Information Security Plan, found online at: <https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspx>.
- 3.3. Oregon's Statewide Policies: www.oregon.gov/das/Pages/policies.aspx#IT.
- 3.4. The Oregon Consumer Information Protection Act (OCIPA), ORS 646A.600 through 646A.628.
- 3.5. **HIPAA Requirements.** Services are subject in part to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act portion of the American Recovery and Reinvestment Act of 2009, and its implementing regulations, including the Privacy and Security Rules found at 45 CFR Parts 160 and 164 (collectively, "HIPAA") because certain Agency programs are operated in its role as a hybrid covered entity.
 - 3.5.1. Contractor is a "Business Associate" of Agency (as that term is defined at 45 CFR § 160.103) for the Services purchased under this Agreement to the extent Services include Agency disclosure of Protected Health Information to Contractor. Contractor agrees to comply with the Business Associate Agreement attached as Attachment ## to the extent that Services or obligations arising under this Agreement are covered by HIPAA, including as specified in Attachment ##, Business Associate Agreement.
- 3.6. **CJIS Requirements.** For Agency Data that includes criminal history record information (CHRI), Contractor shall comply with the Federal Bureau of Investigation Criminal Justice Information Services Addendum, as set forth in Attachment ##, inclusive of all documents incorporated by reference in Section 6.02 of Attachment ##.

4. Notifications.

- 4.1. **Incidents and Breaches.** In the event Contractor or its subcontractor or agents discover or are notified of a suspected or confirmed security incident, or a suspected or confirmed breach of security or privacy, Contractor shall notify Agency's point of contact (or delegate) immediately, and in no event more than 24 hours following discovery or notification. An incident is an observable, measurable occurrence that is a deviation from expected operations or activities. A breach includes a failure to comply with Contractor's confidentiality obligations. If Agency determines that a breach requires notification of its clients, or other notification required by law, Agency will have sole control over the notification content, timing, and method, subject to Contractor's obligations under applicable law.

- 4.2. **Requests for Agency Data.** In the event Contractor receives a third party request for Agency Data, including any electronic discovery, litigation hold, or discovery searches, Contractor shall first give Agency notice and provide such information as may reasonably be necessary to enable Agency to take action to protect its interests.
- 4.3. **Changes in Law.** Each party will provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations.
5. **Access to Data.** Contractor shall not suspend Agency's access to Agency Data at any time during the term of this SOW or the post-termination access period. Upon SOW termination (including by expiration), Contractor shall, at Agency's discretion, either return all Agency Data to Agency (or delegate) in an agreed-upon format, or ensure Agency has access and the ability to retrieve Agency Data following termination for an agreed-upon duration. Contractor shall not retain any copies of Agency Data following Agency's written verification that Agency no longer requires post-termination access, except as necessary for audit verification purposes.
6. **Sanitization.** Contractor shall not destroy Agency Data without Agency's written authorization. Contractor shall notify Agency of any conditions that make returning all Agency Data not feasible. Upon Agency's written acknowledgement that returning all Agency Data is not feasible, Contractor shall promptly purge or destroy retained Agency Data in all its forms (including copies of returned data) in accordance with the most current version of NIST SP 800-53 (or other agreed-upon standard) and provide Agency with written certification sanitization.
7. **Background Checks.** Contractor has completed a criminal background check on its employees, agents, and contractors providing Services under this SOW and who have access to Agency Data. Upon reasonable written request of Agency, Contractor shall certify in writing that such background checks have been completed, and the checks revealed no negative findings pertaining to dishonesty, fraud, or theft on employees, agents, or contractors providing Services.
8. **Purchasing Entity Audit Rights and Access.** Contractor shall maintain records in such a manner as to clearly document its compliance with and performance under this SOW, and provide Agency, the Oregon Secretary of State, and their duly authorized representatives access to Contractor's officers, agents, contractors, subcontractors, employees, facilities and records to:
- 8.1.1. Determine Contractor's compliance with this SOW,
 - 8.1.2. Validate Contractor's written security risk management plan, or
 - 8.1.3. Gather or verify any additional information Agency may require to meet any state or federal laws, rules, or orders, including those regarding Agency Data.
 - 8.1.4. **Notice.** Except as stated below for security logs, access to facilities, systems, and records under this section will be granted following reasonable notice to Contractor. Records include paper or electronic form, and related system components and tools (including hardware and software), required to perform examinations and audits, and to make excerpts and transcripts, including for data forensics.

8.1.5. **System Security Logs.** Contractor shall provide designated Agency staff on-demand access to system security logs in report form for the Services, including user-level access logs for both Agency and Contractor users.

9. Subcontractors. Contractor shall disclose its subcontractors under is Order, and ensure all subcontractors providing services related to this Order comply with its applicable provisions.

10. Amendments. This Order may be amended, modified, or supplemented only by a written amendment that, if required by applicable law, has been approved according to applicable laws, rules and regulations. No amendment will be effective until all requisite signatures and approvals are obtained from both parties.

11. Signatures. CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY STATE APPROVALS.

Contractor:

Signature: _____ Date: _____

Printed Name, Title: _____

Federal Tax ID: _____ Oregon Tax ID: _____

State of Oregon, acting through the [name]

Signature: _____ Date: _____

Printed Name, Title: _____

LEGAL SUFFICIENCY APPROVAL:

Approved by _____ via email dated _____

Matter: _____



Attachment 1

Attachment 2

BUSINESS ASSOCIATE AGREEMENT

PLACEHOLDER for attachment.
DO NOT USE A BAA WITHOUT CONFERRING WITH DOJ.

Attachment 3

PLACEHOLDER for attachment.