

SMALL PACKAGE DELIVERY SERVICES 2016-2021
Lead by the State of UTAH

Master Agreement #: MA454 Oregon Participating Addendum DASPS-2692-16

Contractor: **FEDEX CORPORATE SERVICES, INC.**

Participating Entity: **STATE OF OREGON**
by and through its

DEPARTMENT OF ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES

- A. The following products or services are included in this Addendum:
- Inbound and outbound express small package air and expedited ground intrastate, interstate, and international delivery services
- B. This Addendum establishes an agreement to agree between Contractor and State pursuant to ORS 279B.140. All goods and services offered under the Master Agreement may be procured under this Addendum. This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers.

Master Agreement Terms and Conditions:

1. **Scope:** The State of Oregon Participating Addendum covers the **NASPO ValuePoint State Cooperative Contract for Small Package Delivery Services 2016-2021** led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Oregon. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Order of Precedence:** In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, the following order of precedence applies:
 - (a) This Addendum, less its exhibits;
 - (b) Exhibit No. 1 of the Addendum (State Specific Terms and Conditions);
 - (c) Exhibit No. 2 of the Addendum (Insurance);
 - (d) Exhibit No. 3 of the Addendum (Tax Certification);
 - (e) Carrier Service Guide;
 - (f) The Master Agreement, including its attachments; and
 - (g) Shipping Label.

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4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Elaine Heath
Address:	3650 Hacks Cross Road, Building E, 3 rd Floor, Memphis, Tennessee 38125
Telephone:	858.450.9869
Email:	Elaine.heath@fedex.com

Participating Entity

Name:	Kaliska King
Address:	1225 Ferry St SE, Salem, Oregon 97301
Telephone:	503.378.5332
Email:	Kaliska.King@oregon.gov

5. Participating Entity Modifications or Additions to The Master Agreement:

These modifications or additions apply only to actions and relationships within the Participating Entity.

No changes to the terms and conditions of the Master Agreement are required.

The changes modifying or supplementing the Master Agreement terms and conditions are set forth in Exhibit Nos. 1-3 to this Addendum.

6. Subcontractors: All contractors, dealers, and resellers authorized in the State of Utah, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product or service, or both, available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

NASPO ValuePoint
STATE OF OREGON
PARTICIPATING ADDENDUM



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

Participating Entity: STATE OF OREGON	Contractor: FEDEX CORPORATE SERVICES, INC.
Signature: <u>Kelly R. Mix</u>	Signature: <u>Charles Wagner</u>
Name: <u>Kelly R. Mix</u>	Name: <u>Charles Wagner</u>
Title: <u>Procurement Manager</u>	Title: <u>Worldwide Account Manager</u>
Date: <u>11/23/16</u>	Date: <u>11/23/2016</u>

Approved for Legal Sufficiency Pursuant to ORS 291.047

Approved November 7, 2016 via email
Ellen D. Taussig Conaty
Senior Assistant Attorney General
Oregon Department of Justice
DOJ Matter No. GF0432-16

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775.720.3404
Email:	sberry@naspovaluepoint.org

*Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate databases.*

EXHIBIT No. 1 to STATE OF OREGON PARTICIPATING ADDENDUM

State of Oregon Specific Terms

(Modifying or Supplementing Master Agreement No. MA454)

1. Definitions. The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

"Authorized Purchaser" means an agency of the State of Oregon or any ORCPP member that submits a Shipping Label to Contractor.

"Account" means the account Authorized Purchasers may choose to establish pursuant to the terms of the Master Agreement and this Addendum. All Accounts must be established in accordance with Contractor's carrier service guide ("Carrier Service Guide"). Upon creation of an Account by an Authorized Purchaser in accordance with Contractor's User Manual, all orders for goods and services be made via submission of a Shipping Label, each of which shall constitute a Contract, which shall be subject to the terms of the Master Agreement and this Addendum.

"Contract" means the agreement between Authorized Purchaser and Contractor formed by the Authorized Purchaser's issuance of a Shipping Label that, by virtue of submission by Authorized Purchaser, incorporates, with or without reference therein, the terms and conditions of the Master Agreement and this Addendum.

"DAS PS" means the State of Oregon acting by and through the Department of Administrative Services, Procurement Services.

"ORCPP" means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement entered into by the State.

"Master Agreement" means the State of Oregon Master Agreement # MA065 between Contractor and the State of Utah, on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the goods and services described therein.

"Shipping Label" means the document submitted to Contractor, either in tangible or electronic form by an Authorized Purchaser that specifies the quantity and type of goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Agreement and this Addendum. All Shipping Labels shall be submitted in substantive compliance with

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Contractor's Carrier Service Guide and Section 13.f. of the Master Agreement. In no event, however, shall any term or condition contained in a Shipping Label that is contrary to or conflicts with the terms of the Master Agreement or the Addendum have any force or effect, and the terms of the Master Agreement and this Addendum shall supersede any and all such contrary terms.

"State", for the purposes of this Participating Addendum, means the State of Oregon.

2. Account and Shipping Label.

2.1 Account and Shipping Labels. In order to purchase Contractor's services or goods, Authorized Purchasers shall first create an Account in accordance with Contractor's Carrier Service Guide. All Accounts and each and every purchase made by an Authorized Purchaser under such Authorized Purchaser's Account shall be subject to the terms and conditions of this Master Agreement and the Addendum. All purchases shall be made by submitting a Shipping Label in accordance with Contractor's Carrier Service Guide and Section 13.f. of the Master Agreement. To the extent that any terms or conditions in a Shipping Label differ from the terms of the Master Agreement and the Addendum, the terms of the Master Agreement and the Addendum shall supersede such contrary terms.

2.2 Effect of Shipping Label. The State is only liable for purchases made by State of Oregon agencies that issue Shipping Labels. Other Authorized Purchasers are responsible for any purchases under Shipping Labels they issue. The State expressly disclaims any liability for purchases made by non-State agency Authorized Purchasers or any other entity.

2.3 Verification of Authorized Purchasers. Contractor is responsible for verifying that it provides goods and services under this Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/DAS/PFSS/SPO/coop-menu.shtml> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

3. Payment Provisions. All payments are subject to ORS 293.462.

4. Funds available and authorized/non-appropriation. The payment obligations of the State of Oregon's and its agencies' under this Addendum 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 any Contract issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Contract from any part of Oregon state government other than Authorized Purchaser. Nothing in this Addendum or Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon

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Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract issued under this Addendum.

5. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)

5.1 Volume Sales Reports (VSRs):

5.1.1 VSR Content: Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) calendar days from the end of each calendar quarter. For the purposes of the Master Agreement and this Addendum, quarters end March 31, June 30, September 30, and December 31. All VSRs shall contain all of the following information: (i) Complete and accurate details of all receipts (sales and refunds) for the reported period; (ii) The information as identified in the DAS PS document titled Volume Sales Report Template - Data Requirement, Format and Layout; and (iii) Such other information as DAS PS may reasonably request from time to time.

Contractor shall send a VSR to DAS PS each quarter, regardless of whether there are any sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

5.1.2 Data Medium and Delivery Medium: Contractor shall provide VSRs in MS Excel (xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Deviations from these requirements must be pre-approved in writing by the Contract Administrator.

5.1.3 Receipt/Acceptance: The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. All VSRs must be submitted to vcaf.reporting@state.or.us. A separate section follows describing whether an administrative charge, the Vendor Collected Administrative Fee ("VCAF"), is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to the Master Agreement and this Addendum shall not preclude DAS PS from challenging the validity thereof at any time.

5.1.4 DAS PS reserves the right to terminate this Addendum if volume sales reports are not received as scheduled on in the prescribed format.

5.2 Vendor Collected Administrative Fee (VCAF):

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5.2.1 VCAF Percentage: The VCAF is a charge equal to One Percent (1.0 %) of Contractor's Gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter.

5.2.2 No VCAF Charge to Authorized Purchasers: Contractor shall not charge the VCAF as a separate line item to Authorized Purchasers. Contractor's prices as agreed to in the Master Agreement shall reflect all Contractor's charges to Authorized Purchasers.

5.2.3 Invoicing and Payment Due Date: After submission and receipt of Contractor's quarterly VSR, DAS PS will invoice Contractor for the VCAF on a State generated invoice. Contractor shall remit all VCAF payments to DAS PS upon receipt of invoice but in no event shall any VCAF payment be made later than 45calendar days after the end of each calendar quarter. Contractor is responsible for timely reporting and payment, regardless of which entity actually reports or makes VCAF payment to DAS PS.

5.2.3.1 Payment Format: All VCAF payments shall be in the form of a check remitted to:

State of Oregon
Department of Administrative Services
Attn: Shared Financial Services/PS
155 Cottage Street NE
Salem, Oregon 97301

Any other form of payment must be specifically pre-approved in writing by the Contract Administrator.

5.2.3.2 Interest: Any payments Contractor makes or causes to be made to DAS PS after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS PS's right to interest on late payments shall not preclude DAS PS from exercising any of its other rights or remedies pursuant to the Master Agreement and this Addendum or otherwise with regards to Contractor's failure to make timely remittances.

5.3 Audit: DAS PS, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by

itself or by a person authorized by it, to audit Contractor's Records, as defined herein, and other pertinent data, to determine and verify the figures reported in any VSRs furnished by

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Contractor: In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 5.2.3.2 of this Exhibit No. 1, State Specific Terms, to the Addendum. At the request of DAS PS, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment exists as determined by DAS PS.

5.4 Limitation of Liability: Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Goods or Services and the resulting contractual relationship, if any, with each such contracting party.

6. Warranties. Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum for any purchases made by such Authorized Purchasers pursuant to a Shipping Label. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Authorized Purchaser that:

6.1 Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

6.2 Goods or Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the RFP, Contractor further warrants that all Goods or Services conform to the specifications and meet or exceed all quality and safety standards set in the RFP;

6.3 All Services to be performed under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Addendum;

6.4 Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Services, if any at time of delivery at no charge; and

6.5 All Goods or Services, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods or Services, and that no other person has any right, title or interest in the Goods or Services which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

6.6. Contractor has, for no less than the last six years prior to the Effective Date of this Addendum has complied, as certified in Section 4 of Exhibit 3 to this Addendum, and Contractor shall continue to comply throughout the duration of this Contract and any extensions, 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 this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied 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 applied to Contractor, or to goods, 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.

The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Addendum are cumulative and will be interpreted expansively so as to afford Authorized Purchaser the broadest warranty protection available.

7. Indemnities.

7.1 General Indemnity. Contractor will defend, save, hold harmless and indemnify the Authorized Purchaser and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all claims, suits, actions, losses, damages, settlement amounts, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors or agents under the Addendum.

7.2 Infringement Indemnity. Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, settlement amounts, attorneys' fees, and any and all costs incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the goods or services furnished under a Shipping Label infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable intellectual property right of any third party (an "Infringement Claim").

7.3 Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 7.1 and 7.2 of this Exhibit No. 1, State Specific Terms, to the Addendum, is conditioned on Authorized Purchaser providing to Contractor prompt written notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. For purposes of Section, notice shall be deemed prompt unless Contractor can demonstrate that it was prejudiced in defending the claim or potential claim subject to notice. Contractor shall have control of the defense and settlement of any claim that is subject to Section 7.1 or Section 7.2 of this Exhibit No. 1, State Specific Terms, to the Addendum; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the prior written approval of the Attorney General. The State of Oregon may, at its election assume its own defense and settlement in the event that the State of Oregon determines that Contractor is: (a) prohibited from defending the State of Oregon, (b) not adequately defending the State of Oregon's interests, or (c) that an important governmental principle is at issue and the State of Oregon desires to assume its own defense. In the event the State assumes its own defense and settlement under Subsections (a) or (b), Contractor shall remain liable for and to the State for all costs, expenses, settlements, damages, liabilities, losses, and the like, as if Contractor had retained control of the defense and settlement of any such claim.

7.4 Remedies. If any goods or services furnished by Contractor are, in Contractor's opinion, likely to become the subject of an Infringement Claim, or if an Authorized Purchaser 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 Authorized Purchaser the right to continue using the allegedly infringing goods or services, or replace or modify the goods or services so that they become non-infringing; provided that the replacement or modified good or service meets the specifications agreed to in the Master Agreement and this Addendum. If the foregoing remedies are not available, then Contractor will refund Authorized Purchaser's payments, in full, for the allegedly infringing goods or services.

8. Term and Termination of Participating Addendum.

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8.1 Term. This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

8.2 Termination. DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor. In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS PS may establish in such notice, for any reason, or upon the occurrence of any of the following events:

8.2.1 State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Addendum; or

8.2.2 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under this Addendum is prohibited or the State is prohibited from paying for such goods from the planned funding source.

Upon receipt of written notice of termination, Contractor will stop performance under all Shipping Labels as directed by State.

8.3 Any failure by Contractor to comply with the provisions of this subsection 6.6 of this Exhibit 1, of this Exhibit No. 1, State Specific Terms, to the Addendum or a breach constitutes a material breach of this Contract. Further, any failure to comply with Contractor's certifications set forth in Exhibit 3 to this Addendum also constitutes a material breach of this Contract. Any failure to comply entitles the State to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract in whole or in part. Upon receipt of written notice of termination, Contractor will stop performance under all Shipping Labels as directed by State. In addition to pursuing recovery of damages and termination, the State shall also have the right to pursue any or all of the other remedies available under this Contract, at law, or in equity, including but not limited to:

8.3.1 Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and

8.3.2 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The State may recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

This Contract 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 due to the State or a political subdivision, including (i) garnishing the Contractor's compensation under this Contract or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State or its political subdivisions for which the Department of Revenue collects debts.

8.4 Termination under any provision of this Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Addendum or a Shipping Label with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Authorized Purchaser to indemnification by Contractor. If this Addendum or a Shipping Label is so terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by the Authorized Purchaser.

9. Compliance with Applicable Law. Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Contract, and an Authorized Purchaser's performance under a Shipping Label is conditioned on Contractor's compliance with the provisions of: ORS 279A.167 and OAR 125-246-0330, as well as 279B.220, 279B.230, 279B.235, 279B.270, and all administrative rules and regulations related thereto. In addition, Contractor warrants good and services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Without limiting the foregoing in this Section or as provided elsewhere in this Addendum, Contractor shall comply with the following: (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) ORS 652.220, prohibition against wage discrimination, (e) all regulations and administrative rules established pursuant to the foregoing laws, and (f) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

10. Application of Public Records Law. Contractor acknowledges that any disclosures Contractor makes to Authorized Purchaser under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 - 192.505, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 - 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Authorized Purchaser may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Authorized Purchaser's release of documents to Entities other than participating agencies or

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other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense,

11. Recycled Products. Contractor will use, to the maximum extent economically feasible in the performance of this Contract, 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).

12. Notices.

12.1 Communications regarding the terms and conditions of this Addendum, including, without limitation, a notice of breach of this Addendum shall be given in writing by personal delivery or by mailing the notice via U.S. Mail or express commercial carrier to the persons and at the addresses identified as the Primary Contacts in Section 4 of the Addendum. Any communication so delivered will be deemed to have been received as follows: (a) via hand delivery: upon actual receipt by the authorized representative of the notified party; (b) via U.S. Mail: upon the fifth calendar day after placing such notice with the U.S. Mail; and (C) via express commercial carrier: on the second day after placing such notice with such express commercial carrier.

12.2 Communications regarding instructions for delivery under a particular Shipping Label shall be given in the applicable Shipping Label.

13. Governing Law. This Addendum and resulting Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

14. Jurisdiction and Venue. 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 a Shipping Label under this Addendum, will 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 will 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 A SHIPPING LABEL 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 in State or Federal Court.

Any Claims between Contractor and an Authorized Purchaser other than the State of Oregon or State agency that arise from or are related to individual Shipping Label or this Addendum will be

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brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser 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 will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

15. 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 Contract. An Authorized Purchaser may withhold final payment under a Shipping Label until Contractor has provided the Oregon Department of Revenue with the required information.

16. Merger Clause; Waiver. This Addendum, including the Master Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersedes all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Addendum. No waiver, consent, modification or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Addendum does not constitute a waiver by the State of that or any other provision.

17. Independent Contractor. Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (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, or 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.

18. Access to Records. Contractor will maintain all fiscal records relating to Shipping Labels in accordance with generally accepted accounting principles and will maintain any other records relating to Shipping Labels in such a manner as to clearly document Contractor's performance thereunder. The Authorized Purchaser, 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

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and Authorized Purchasers. 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.

19. Severability. If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.

20. Survival. Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.

21. Insurance. Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2, Insurance, to this Addendum. No Shipping Label may be placed or accepted until proof is provided that these requirements have been met.

22. Anticipated Amendments. The parties may need to amend this Addendum to modify selected terms, conditions, and price(s). This Addendum maybe modified by written document only.

EXHIBIT No. 2 to STATE OF OREGON PARTICIPATING ADDENDUM

INSURANCE

Contractor shall obtain at Contractor's expense the insurance 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 following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS. 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 contract 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 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$5,000,000 for bodily injury and property damage.

ADDITIONAL INSURED:

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

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

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continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) 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 Agency has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The contractor or its insurer must provide at least 30 days' written notice to Agency 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 Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

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EXHIBIT No. 3 to STATE OF OREGON PARTICIPATING ADDENDUM
CONTRACTOR TAX CERTIFICATION

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

Federal Tax Number 710427007

Oregon Tax Number _____

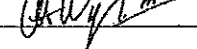
2. Contractor is not subject to backup withholding because:

- (i) Contractor is exempt from backup withholding,
- (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
- (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Addendum and any Contract, Contractor faithfully has complied with:

- (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this state that applied 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 applied to Contractor, or to goods, 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.

Contractor Signature 
Date 11/23/2016