

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

Master Agreement #: MA065

Oregon Participating Addendum #DASPS-2691-16

Contractor:

UNITED PARCEL SERVICES, INC.
(“CONTRACTOR” OR “UPS”)

Participating Entity

STATE OF OREGON *by and through its*
DEPARTMENT OF ADMINISTRATIVE SERVICES,
PROCUREMENT SERVICES
(“Participating State”)

This Participating Addendum between Contractor and Participating State, effective as of January 7, 2017 (“Participating Addendum”), is issued pursuant to that certain Master Agreement #MA065 (including all attachments), executed between the Contractor and the State of Utah, effective November 28, 2016 (“Master Agreement” and as further defined below in Section 1 of Exhibit 1 to the Participating Addendum), the terms and conditions of which are incorporated herein by reference. Except as set forth herein, all defined terms in this Participating Addendum shall have the meaning set forth in the Master Agreement (including all attachments).

This Participating Addendum establishes an agreement between Contractor and Participating State pursuant to ORS 279B.140. All goods and services offered under the Master Agreement may be procured under this Participating Addendum (the Master Agreement and this Participating Addendum are, collectively, the “Oregon-UPS Agreement”). This Participating Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Purchasing Entities (as defined in Section 1 of Exhibit 1 to this Participating Addendum).

Participating Addendum Terms and Conditions:

1. Scope: This 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.
 - (a) The following products or services are included in this Oregon-UPS Agreement: Inbound and outbound express small package air and expedited ground intrastate, interstate, and international delivery services.
 - (b) Rate: Multi BRG



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2. Participation: This Oregon-UPS 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 ("Purchasing Entities"). Issues of interpretation and eligibility for participation are solely within the authority of the Participating State's 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 Participating Addendum, less its exhibits;
 - (b) Exhibit No. 1 of the Participating Addendum (State Specific Terms and Conditions);
 - (c) Exhibit No. 2 of the Participating Addendum (Insurance);
 - (d) Exhibit No. 3 of the Participating Addendum (Tax Certification);
 - (e) The Master Agreement, including all attachments; and
 - (f) Any Shipping Label or any other documentation pursuant to which a Purchasing Entity purchases Contractor's Services or Goods.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Tom Dames
Address:	55 Glenlake Parkway, Atlanta, GA 30328
Telephone:	202.675-4255
Email:	tdames@ups.com

Participating State

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

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5. Participating State Modifications or Additions to the Master Agreement:

These modifications or additions apply only to actions and relationships within the Participating State and Purchasing Entities under this Participating Addendum.

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 Participating Addendum.

6. Subcontractors: All contactors, 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 Master Agreement and this Participating Addendum. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement and this Participating Addendum.

7. Orders: Any order placed by a Participating State or Purchasing Entity for a product or service, or both, available from this Oregon-UPS 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.

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

Participating Entity: **STATE OF OREGON**

Contractor: **UNITED PARCEL SERVICE, INC.**

Signature: Kelly A. Mix

Signature: Florence Matteo

Name: Procurement Manager

Name: Florence Matteo

Title: Kelly A. Mix

Title: Director of Enterprise Accounts

Date: 1-5-17

Date: January 5, 2017

Approved for Legal Sufficiency Pursuant to ORS 291.047

NASPO ValuePoint
STATE OF OREGON
PARTICIPATING ADDENDUM



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

January 5, 2017
Date

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. MA065)

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

“Account” means the account Purchasing Entities may choose to establish pursuant to the terms of the Oregon-UPS Agreement. All Accounts must be established in accordance with the UPS Rate and Service Guide. Upon creation of an Account by a Purchasing Entity in accordance with the UPS Rate and Service Guide, all orders for goods and services shall be made via submission of a Shipping Label, each of which shall constitute a Contract, which shall be subject to the terms of the Oregon-UPS Agreement.

“Contract” means the agreement between a Purchasing Entity and Contractor formed by the Purchasing Entity’s issuance of a Shipping Label that, by virtue of submission by Purchasing Entity, incorporates, with or without reference therein, the terms and conditions of the Oregon-UPS Agreement.

“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 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 Participating Addendum sets forth terms, conditions and requirements for purchase by Purchasing Entities of the goods and services described therein and together constitute the **“Oregon-UPS Agreement”**.

“Purchasing Entity” means any one of the agencies of the State of Oregon (**“State Agencies”**) or any one of the ORCPP members that is authorized to enter into a Contract with Contractor pursuant to this Participating Addendum. Purchasing Entities are all or any combination of the ORCPP Members, including State Agencies.

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“Shipping Label” means the document submitted to Contractor, either in tangible or electronic form by a Purchasing Entity that specifies the quantity and type of goods or services that Contractor will provide to the Purchasing Entity under the terms of the Master Agreement and this Participating Addendum. All Shipping Labels shall be submitted in substantive compliance with the UPS Rate and Service Guide. 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 Participating Addendum have any force or effect, and the terms of the Master Agreement and this Participating Addendum shall supersede any and all such contrary terms.

“State”, for the purposes of this Participating Addendum, means the State of Oregon. The State is a Purchasing Entity.

2. Account and Shipping Label.

2.1 Account and Shipping Labels. In order to purchase Contractor’s services or goods, Purchasing Entities shall first create an Account in accordance with the UPS Rate and Service Guide. All Accounts and each and every purchase made by a Purchasing Entity under such Purchasing Entity’s Account shall be subject to the terms and conditions of this Oregon-UPS Agreement. All purchases shall be made by submitting a Shipping Label in accordance with the UPS Rate and Service Guide. To the extent that any terms or conditions in a Shipping Label differ from the terms of the Oregon-UPS Agreement, the terms of the Oregon-UPS Agreement shall supersede such contrary terms.

2.2 Effect of Shipping Label. The State is only liable for purchases made by State Agencies that issue a Shipping Labels. Other Purchasing Entities that are not- State Agencies are responsible for any purchases under Shipping Labels they issue. The State expressly disclaims any liability for purchases made by non-State Agency Purchasing Entities or any other entity or entities.

2.3 Verification of Purchasing Entities. Contractor is responsible for verifying that it provides goods and services under this Oregon-UPS Agreement only to Purchasing Entities. 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 and its State Agencies under this Oregon-UPS Agreement are conditioned upon the applicable State Agency receiving funding, appropriations, limitations, allotments, or other

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expenditure authority sufficient to allow such State Agency, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract issued under this Oregon-UPS Agreement. Contractor is not entitled to receive payment under this Oregon-UPS Agreement or any Contract from any part of Oregon state government other than the applicable State Agency. Nothing in this Oregon-UPS Agreement or any Contract 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. State Agency represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract issued under this Oregon-UPS Agreement.

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 Oregon-UPS Agreement, 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 Oregon-UPS Agreement shall not preclude DAS PS from challenging the validity thereof at any time.

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

5.2 Vendor Collected Administrative Fee (VCAF):

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 Purchasing Entities during the calendar quarter.

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

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 Oregon-UPS Agreement 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 Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall pay the amount of deficiency within thirty (30) days, together with interest thereon at the rate provided in Section 5.2.3.2 of this Exhibit No. 1, State Specific Terms, to the Participating Addendum. In the event an audit reveals an underpayment of administrative fees and such underpayment exceeds five percent (5%) of the total quarterly administrative fees that should have been paid in such quarter by Contractor if Contractor had not underpaid such fees, Contractor shall, upon request of DAS, pay the reasonable costs of such audit.

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. Purchasing Entities are entitled to the warranties, rights, remedies, and benefits under the Oregon-UPS Agreement for any purchases made by such Purchasing Entities pursuant to Shipping Labels. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Purchasing Entities that:

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

6.2 All Services to be performed under this Oregon-UPS Agreement will be performed in accordance with the applicable professional or industry standards; and

6.3. 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 Participating Addendum, and Contractor shall continue to comply throughout the duration of this Contract and any extensions, with all applicable 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,

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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 Participating Addendum are cumulative and will be interpreted expansively so as to afford Purchasing Entity the broadest warranty protection available.

7. Indemnities.

7.1 General Indemnity. Contractor will defend, save, hold harmless and indemnify the Purchasing Entity and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all third party claims, suits, actions, losses, damages, settlement amounts, liabilities, costs and expenses for any death, injury, or damage to tangible property (including attorneys' fees) , resulting from, arising out of, or relating to the negligence, gross negligence, or intentional misconduct of Contractor or its officers, employees, subcontractors or agents under the Participating Addendum; provided that Contractor's indemnification obligation shall not extend to (a) any claim resulting from the State of Oregon or any Purchasing Entity's independent negligent acts where such acts are the sole cause of the claim; or (b) any claim arising from or relating to the loss, damage, delay, mis-delivery, or non-delivery of packages transported under the Oregon UPS Agreement. With respect to any third party claims arising from or relating to the loss, damage, delay, mis-delivery, or non-delivery of packages transported under the Oregon UPS Agreement, such claims shall be governed by the terms of the UPS Rate and Service Guide in effect at the time of package shipment giving rise to the claim.

7.2 Infringement Indemnity. Contractor will defend, save, hold harmless and indemnify Purchasing Entities and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all third party 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 third party 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").

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7.3 Control of Defense and Settlement. Contractor's obligation to indemnify Purchasing Entity as set forth in Sections 7.1 and 7.2 of this Exhibit No. 1, State Specific Terms, to the Addendum, is conditioned on Purchasing Entity providing to Contractor prompt written notification of any claim or potential claim of which Purchasing Entity 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 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 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, which will not be unreasonably withheld. 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; provided that the State of Oregon may not settle any claim or action without Contractor's prior written consent, which will not be unreasonably withheld.

7.4. Damages. Notwithstanding anything to the contrary in this Participating Addendum or the Master Agreement and except for limitations on damages for claim arising from or relating to the loss, damage, delay, mis-delivery or non-delivery of packages transported under the Oregon UPS Agreement, which such claims shall be governed by the terms of the UPS Rate and Service Guide in effect at the time of package shipment giving rise to the claim, any limitation on damages shall not apply to claims subject to indemnification under this Section 7 of this Participating Addendum or any applicable indemnification provision in the Master Agreement.

8. Term and Termination of Participating Addendum.

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 Participating Addendum in accordance with its terms.

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8.2 Termination. DAS PS may terminate this Participating Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor; provided that for breaches of the Participating Addendum, Contractor will be given an opportunity to cure such breach within the 30 day notice period set forth herein. In addition, DAS PS may terminate this Participating 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 Participating 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 Participating 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 A material breach under the Oregon-UPS Agreement, shall include, without limitation: any failure by Contractor to comply with the provisions of subsection 6.3 of this Exhibit 1, State Specific Terms, to the Participating Addendum. Further, any failure to comply with Contractor's certifications set forth in Exhibit 3 to this Participating Addendum also constitutes a material breach of this Contract. Any such breach entitles the State to terminate this Contract in accordance with Section 8.2 above and 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 (excluding indirect, incidental, consequential, special or punitive 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

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as the result of Contractor's breach of this Contract, (excluding indirect, incidental, consequential, punitive, or special damages), including 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 Oregon-UPS Agreement does not extinguish or prejudice State's or a Purchasing Entity's right to enforce the Oregon-UPS Agreement 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 a Purchasing Entity to indemnification by Contractor. If the Oregon-UPS Agreement, this Participating Addendum, or a Shipping Label is so terminated, the State or a Purchasing Entity will pay Contractor in accordance with the terms of the Oregon-UPS Agreement for goods delivered and accepted by the Purchasing Entity.

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 Purchasing Entity'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 the Oregon-UPS Agreement 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 Purchasing Entity under the Oregon-UPS Agreement 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 -

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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 Purchasing Entity may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Purchasing Entity's release of documents to entities or other third parties other than Purchasing Entities. 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 Oregon-UPS Agreement including, without limitation, a notice of breach of the Oregon-UPS Agreement 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 Participating 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 Oregon-UPS Agreement 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 the Oregon-UPS Agreement or a Shipping Label under this Oregon-UPS Agreement, 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 PARTICPATING ADDENDUM OR ACCEPTANCE OF A SHIPPING LABEL SUBMITTED PURSUANT TO THE OREGON-UPS

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AGREEMENT 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 a Purchasing Entity other than the State of Oregon or a State Agency that arise from or are related to individual Shipping Labels or this Oregon-UPS Agreement will 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 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 Participating Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. A Purchasing Entity 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. The Oregon-UPS Agreement and all the exhibits and attachments attached thereto, 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 the Oregon-UPS Agreement. No waiver, consent, modification or change of terms of the Oregon-UPS Agreement 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 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, 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.

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18. Access to Records. Contractor will maintain all fiscal records relating to Shipping Labels and the Oregon-UPS Agreement in accordance with generally accepted accounting principles and will maintain any other records relating to Shipping Labels and the Oregon-UPS Agreement in such a manner as to clearly document Contractor's performance thereunder. The Purchasing Entity, the State and its State 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 the Oregon-UPS Agreement 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 Participating Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to the Oregon-UPS Agreement, whichever date is later.

19. Severability. If any term or provision of the Oregon-UPS Agreement 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 Oregon-UPS Agreement did not contain the particular term or provision held to be invalid.

20. Survival. Any terms of the Oregon-UPS Agreement, 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 Participating Addendum, the Master Agreement, or both.

21. Insurance. Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2., Insurance, to this Participating 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 Participating Addendum to modify selected terms, conditions, and price(s). This Participating Addendum may be modified only by a written amendment signed by both parties and shall not be effective until all approvals required by applicable law have been made in writing.

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 and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds by blanket endorsement but only with respect to Contractor's activities to be performed under the Oregon-UPS Agreement.

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

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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 certificates of insurance 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 _____

Oregon Tax Number _____

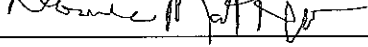
2. Contractor is not subject to backup withholding because:

- (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 Participating 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 1-5-17

