

**OFFICE FURNITURE**  
Led by the State of Utah

---

Master Agreement #: MA146

Contractor: **THE HON COMPANY**

Participating Entity: **STATE OF OREGON**

Contractor:

This State of Oregon Participating Addendum ("**Participating Addendum**") establishes a price agreement between Contractor and Participating Entity pursuant to ORS 279B.140, including the provisions of that certain Master Agreement # MA146 (including all attachments), executed between the Contractor and the State of Utah, effective January 22, 2018 ("**Master Agreement**") and as further defined in Section 1 of Exhibit 1 to the Participating Addendum, the terms and conditions of which are incorporated herein by reference (the Master Agreement together with this Participating Addendum are, collectively, the "**Oregon Agreement**").

The term of this Participating Addendum is co-terminus with the NASPO ValuePoint Master Agreement # MA146.

Notwithstanding the foregoing, any amendments to Master Agreement agreed upon between the State of Utah and Contractor shall automatically become a part of this Participating Addendum. All capitalized terms in this Participating Addendum shall have the meaning set forth in the Master Agreement (including all attachments) unless otherwise defined in this Participating Addendum.

The goods and services offered under the Master Agreement that may be procured under this Participating Addendum are described in Section II, 2.1 below. This Participating Addendum contains the additional terms and conditions specifically applicable to individual Contracts between Contractor and Purchasing Entities. In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, the conflict will be resolved as set forth in Section II.2, below.

**I. Participating Addendum Terms and Conditions:**

1. Participation: This Participating Addendum may be used by all agencies, boards, and commissions of the State of Oregon, as defined in Section 1 of the Oregon Terms (collectively, "**State Agencies**" and individually, a "**State Agency**"), and by State of Oregon institutions of higher institution, political subdivisions, and other entities authorized to use statewide contracts in the State of Oregon including without limitation, members of the Oregon Cooperative Procurement Program ("**ORCPP**"). Each of the aforementioned is a ("Purchasing Entity"). Issues of interpretation and eligibility for participation as a Purchasing Entity are solely within the authority of the Participating Entity's Chief Procurement Official.
2. Scope: This Participating Addendum covers the Master Agreement # MA146 for Office Furniture ("**Goods**" or "**Products**") and related design, installation and customer services ("**Services**") led by the State of Utah for use by Purchasing Entities as authorized by the Participating State's statutes to utilize price agreements solicited and entered into by other states with the prior approval of the Participating State's Chief Procurement Official.

**OFFICE FURNITURE**Led by the State of Utah

---

Pursuant to this Participating Addendum, Contractor shall provide to Purchasing Entities, as requested by Purchasing Entities from time to time, the Goods and Services specifically identified in Section I.2 of this Participating Addendum.

**2.1 No Exclusivity.** This Participating Addendum is not exclusive. There may be one or more contractors who may provide similar goods and services to Purchasing Entities. If the Participating Entity has awarded more than one master agreement for Goods and Services, Purchasing Entities shall select a contractor from among those master agreements in accordance with the selection process set forth in the buyer's guide provided to Purchasing Entities by the Contract Administrator.

2.1.1 The following Products and Services are available for purchase under this Participating Addendum portfolio:

**Note:** The term "wooden" when used to describe Goods includes wood, veneer and wood laminate.

**Product and Service Categories:****Workspace Furniture**

The Workspace Furniture category will group together three (3) categories of coordinating furniture. This category has been created so that end users of the resulting contracts have an option of selecting from a group of coordinating furniture for the office environment.

**Systems Furniture and Accessories:** Systems furniture, including monolithic and frame and tile, is a generic term for panels, work-surfaces, shelves, and other items sold by a single manufacturer as a package for furnishing offices. Cubicles and the sea of cubicles are the items most often associated with systems furniture, but other open plan arrangements are included.

**Desks/Tables and Accessories:** A desk/table is a freestanding unit having a work surface that is supported by legs or pedestals, in some instances; the unit will have sit-to-stand capability, drawer(s), doors, or other storage elements. Free-standing desks, conference room tables, small office tables, side tables, and dining tables are included in this category.

**Filing and Storage and Accessories:** The filing and storage category may include, but is not limited to; bookcases, wardrobes, cabinets, Free-standing and mobile pedestals, and wall mounted shelving. This category does not include shelving units that are attached to system Furniture cubicle walls.

**Service Categories:**

Design Services include but are not limited to; space planning, installation plans, furniture migration strategies, reconfiguration of existing systems, inventory of existing furniture, assistance with furniture selection, interior office design, and computerized installation drawings.

**OFFICE FURNITURE (2018-2023)**  
**Led by the State of Utah**

---

2

**Installation Service**

Installation Services include all labor required to disassemble, assemble, deliver, set-up, install, and otherwise finish an office installation or remodel project.

**Customer Service**

Including but not limited to sales service, customer service, product information services, and warranty services.

**II. Master Agreement Terms and Conditions:**

**2.1 Not Exclusive; Selection Process:** This section 2.1 refers to obligations of the Participating Entity and not Contractor. Any compliance with this Section by Contractor will be at the direction of the Participating Entity.

2.1.1 This Participating Addendum is not exclusive. Participating Entity is free to enter into a Participating Addendum with one or more of the other awardees in the Office Furniture and Services solicitation as set forth in the RFP #RC17020 lead by the State of Utah.

If multiple Master Agreements are awarded under the above-referenced RFP, Participating Entity may elect to not enter into any additional Participating Addendum with the other Awardees following Participating Entity's award to the highest-ranked Proposer under the RFP. If the Participating Entity to not enter into a Participating Addendum with all of the Awardees, Participating Entity may enter into a Participating Addendum with the highest-ranked Proposer under the above-referenced RFP, and the number of the next highest-ranked Proposers, in descending order of rank, as Participating Entity deems in its best interest.

2.1.2 Purchasing Entities - Selection Process for State Agencies. From time to time, Purchasing Entities that are State Agencies may purchase Products and Services from contractors under master agreements or other contractors.

2.1.3 Purchasing Entities that are State Agencies shall use one of the following three selection processes to select the contractor for Goods and Services:

1) **Highest Ranked Proposer in RFP # RC17020:** Purchasing Entity may issue purchase orders or contracts for Products or Services, or both, to the Awardee who received the highest total points in RFP #RC17020;

OR

2) **Highest Ranked Proposer in Product Comparison:** Purchasing Entity, on an

**OFFICE FURNITURE (2018-2023)**  
Led by the State of Utah

---

annual basis (beginning upon the Effective Date of this 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 may create its own Products and Services list comprised of up to 100 most used Products and Services ("Market Basket");
- (b) Purchasing Entity may then define the criteria for, and assign a total possible point award amount, to the attributes most important to Purchasing Entity in the selection of a contractor for Products and Services, such as: price, functionality, accounting/invoicing issues, use, availability, past performance;
- (c) Purchasing Entity shall request quotes for the Market Basket contents from each of the contractors for the upcoming contract year period;
- (d) Purchasing Entity shall then evaluate and score the market basket from each contractor; and
- (e) Purchasing Entity shall acquire the Products and Services from the proposer with the highest-ranking Market Basket.

OR

**3) Cost Comparison:** Purchasing Entity may conduct a Product-specific or Service-specific, or both, comparison for each required Good and Service, based upon price.

2.1.4 Purchasing Entity must document its selection process in its procurement file.

2.1.5 Contractors chosen in accordance with one of the above selection processes are final, per Purchasing Entity's decision.

2.1.5.1 Orders: Any Order placed by a Purchasing Entity for a Product or Service, or both, available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement unless: (a) the parties to the Order agree in writing that another contract or agreement applies to such Order; (b) it is a purchase from an agency that is not mandated to purchase under this agreement and elects to purchase under an alternate agreement.

**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;

**OFFICE FURNITURE (2018-2023)**  
Led by the State of Utah

---

- (b) Exhibit No. 1 of the Participating Addendum (State of Oregon 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;
  - (f) Any Shipping Label, Purchase Order, or any other documentation pursuant to which a Purchasing Entity purchases Contractor's Services or Goods, or both – pre-printed terms and conditions are specifically excluded unless otherwise agreed to by Contractor and Purchasing Entity;
  - (g) Exhibit No. 4 of the Participating Addendum (Price List by reference for Product & Service Categories);
  - (h) Exhibit 5 of the Participating Addendum (Oregon Volume Sales Report Template)
4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	The HON Company
Address:	200 Oak Street, Muscatine, IA 52761
Telephone:	(563) 272-3954
Fax:	
Email:	<a href="mailto:contractmanager@honcompany.com">contractmanager@honcompany.com</a>

Participating Entity

Name:	Pam Johnson, State of Oregon, Depart. Of Administrative Services, PS
Address:	1225 Ferry St. SE, Salem, OR 97301
Telephone:	(503) 378-4731
Fax:	(503) 373-1626
Email:	<a href="mailto:Pam.johnson@oregon.gov">Pam.johnson@oregon.gov</a>

**OFFICE FURNITURE (2018-2023)**  
Led by the State of Utah

---

**5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

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

Participating Entity must check one of the boxes below.

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

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of Oregon, 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. Tax Compliance:**

Contractor represents and warrants that Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Participating 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 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.

Any violation of this Section 9 constitutes a material breach of this Participating Addendum and any Contract issued under this Participating Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Participating Addendum and any Contract issued under this Participating Addendum. Any violation shall entitle DAS PS or Authorized Purchaser to terminate this Participating Addendum or the applicable Contract, to pursue and recover any and all damages that arise

**OFFICE FURNITURE (2018-2023)**  
**Led by the State of Utah**

---

from the breach and the termination of this Participating Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Participating Addendum, a Contract, at law, or in equity, including but not limited to:

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

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

This Addendum 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 of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Addendum or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Addendum or any Contract 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.

8. **Freight Charges:** Freight Charges (unless otherwise stated in the master contract): Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

**9 Design: Installation and Reconfiguration Services:** Contractor shall provide, through their Authorized Dealer network, all design, installation, layout, and reconfiguration services to all Purchasing Entities. Design and layout services will be charged on an hourly basis; the maximum charge for each of these services will not exceed \$65 per hour. Reconfiguration services will be charged on an hourly basis; the maximum charge for this service will not

**OFFICE FURNITURE (2018-2023)**  
Led by the State of Utah

---

exceed \$50 per hour during standard business hours Monday-Friday 8am-5pm and will not exceed \$75 per hour during non-business hours. Installation and inside delivery charges for all products offered through this PA will be negotiated on a project-by-project basis with the Authorized Dealer. Installation and inside delivery charges will be included as a line item in the quote provided by the Authorized Dealer. Contractor shall provide, through their Authorized Dealer network or approved freight carrier(s) liftgate services and other non-standard delivery services which are outside of Contractor's standard freight costs, such as palletization, storage, special permits, etc.; should Contractor be able to accommodate the request, these services will be negotiated on a project by project basis and approved by the purchasing entity. Charges for non-standard delivery services will be included as a line item in the quote provided by the Authorized Dealer.

**10. Discounts:**

**HON.**

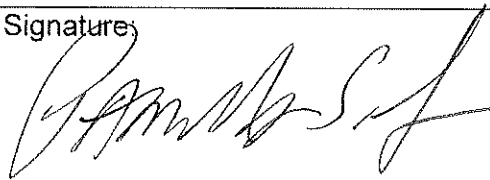
State of Oregon NASPO Value Point

Tier	Total Order at List	Workspace Furniture Systems and Pedestals	Vertical & Lateral Files, Storage	Workspace Furniture Tables, Desking, Caseworks
1	\$0 - \$50,000	69.4%	60.3%	57.3%
2	\$50,001 - \$150,000	70.4%	64.3%	60.2%
3	\$150,001 & Above	70.4%	69.4%	62.8%



**OFFICE FURNITURE (2018-2023)**  
Led by the State of Utah

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: The HON Company LLC
Signature: 	Signature: Gerry Roark
Name: Pam Johnson	Name: Gerry Roark
Title: State Procurement Analyst	Title: Senior Finance Manager
Date: 5/3/19	Date: 5-1-19

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	<a href="mailto:sberry@naspovaluepoint.org">sberry@naspovaluepoint.org</a>

***[Please email fully executed PDF copy of this  
document to***

***[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)***

***to support documentation of participation and posting  
in appropriate data bases.]***



**EXHIBIT NO. 1**  
**State of Oregon Participating Addendum**  
**to**  
**NASPO Master Agreement No. MA146**  
**State of Oregon-Specific Terms and Conditions**

**1. Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Exhibit 1, State of Oregon-Specific Terms (these "**Oregon Terms**"), have the meanings ascribed to them in the Master Agreement and its exhibits.

**"Acceptance"** has the meaning assigned to it in Section 5.1 of these Oregon Terms.

**"BOLI"** means Bureau of Labor and Industries

**"Business Day"** means Monday through Friday from 8:00 am – 5:00 pm pacific time, excluding State of Oregon holidays and other business closure days resulting from natural disasters, inclement weather, or other similar events.

**"Calendar Day"** means contiguous days.

**"Contract"** means the agreement that is formed between a Purchasing Entity and Contractor when (a) a Purchasing Entity issues a Purchase Order that incorporates by reference the terms and conditions of the Participating Addendum and (b) Contractor accepts such Purchasing Entity's Purchase Order.

**"Contract Administrator"** means the person who is identified as the Primary Contact for the Participating Entity in Section 44.2 of the Participating Addendum.

**"Contractor"** means The HON Company LLC

**"Contractor Records"** means all fiscal records and all other books, documents, papers, plans and writings (regardless of whether such records are in hard copy, electronic, or other form) of Contractor which relate to this Participating Addendum, any and all Contracts entered into between Contractor and Purchasing Entities pursuant to this Participating Addendum, and Contractor's performance under this Participating Addendum and any and all Contracts.

**"DAS PS"** means the State of Oregon acting by and through the Department of Administrative Services, Procurement Services and is the State agency with the statutory, pursuant to ORS 279B.140, to negotiate and administer this Participating Addendum .

**"Goods"** means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that a Purchasing Entity is authorized to procure under the Participating Addendum as set forth in Section 2.4 of the Participating Addendum.

**"Services"** means the furnishing of labor, time, or effort by Contractor to maintain, overhaul, rehabilitate, or otherwise repair a Good purchased, rented, or leased by a Purchasing Entity from Contractor.

**"Oregon Cooperative Purchasing Program" or "ORCPP"** means the cooperative purchasing program that recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the Goods and Services available under the Participating Addendum.

**"Master Agreement"** means the NASPO Master Agreement No.MA146 between Contractor and the State of Arizona, on behalf of the member states of the National Association of State Procurement Officials, NASPO ValuePoint, and its attachments, and which serves as the underlying agreement and basis for Contractor and Participating Entity to execute the Participating Addendum.

**"Participating Addendum"** means the agreement between the Participating State and Contractor to which these Oregon Terms are attached as Exhibit 1 and includes. the Master Agreement and the Participating Addendum together with all applicable Exhibits to both (including, without limitation, these Oregon Terms), Attachments, Schedules, and, as applicable, any amendments made in accordance with Section 55 of these Oregon Terms and which sets forth the terms, conditions, and requirements pursuant to which Purchasing Entities may buy, and Contractor shall provide, the Goods and Services set forth in this Participating Addendum.

**"Participating Entity"** means the State of Oregon acting by and through the DAS PS and in accordance with Section 2 of the Master Agreement is properly authorized to enter into the Participating Addendum with Contractor.

**"Participating State"** means, in accordance with Section 2 of the Master Agreement, the State of Oregon having been listed in the Lead State's Request for Proposal as a state intending to participate in the procurement. .

**"Purchasing Entity"** means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor. Without limiting the foregoing, and for purposes of clarification, DAS PS is a Purchasing Entity when it enters into a Contract on behalf of and for the benefit of itself.

**"Purchase Order"** means any written purchase order, sales order, or other document submitted to Contractor by a Purchasing Entity that incorporates the terms and conditions of the Participating Addendum by reference and specifies the quantity and type of Goods or Services, or both, that Contractor will provide to the Purchasing Entity under the terms of the Participating Addendum.

**"Rejection"** has the meaning assigned to it in Section 7.2 of these Oregon Terms.

**"RFP"** means the NASPO ValuePoint Request for Proposals, Utah Solicitation Number RC17020.

**"Revocation"** has the meaning assigned to it in Section 7.3 of these Oregon Terms.

**"State"** means the State of Oregon.

**"State Agency"** means the State of Oregon acting by and through its state agencies, boards, and commissions as defined in ORS 174.111. Some State Agencies are members of ORCPP.

**"Term"** has the same meaning ascribed to it in Section 3 of the Master Agreement, the Participating Addendum is co-terminus with the Master Agreement.

## **2. Offer to Provide: Purchase Orders.**

**2.1. Offer to Provide.** During the Term of the Participating Addendum, Contractor agrees to offer and provide, as requested by a Purchasing Entity from time to time, the Goods and Services identified in Section 2 of the Participating Addendum.

**2.2. Purchase Orders.** Purchasing Entities may use their own Purchase Order forms for the purchase of Goods and Services. State agencies may also use the general State-approved Purchase Order referencing NASPO Master Agreement Number MA146. To the extent that the terms or conditions, or both of any Purchase Order differ from or conflict with the terms of the Participating Addendum, the difference or conflict will be resolved in accordance with Section 3 of the Participating Addendum. Each Purchase Order from an Authorized Purchaser that is not a State agency must contain, on the front page, the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF OREGON  
MASTER AGREEMENT NO. MA146 THE TERMS AND CONDITIONS  
OF THE MASTER AGREEMENT AND THE ASSOCIATED  
PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF  
OREGON, PARTICIPATING ADDENDUM NO. 9268 APPLY TO THIS  
PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND  
CONDITIONS, EXPRESS OR IMPLIED.**

Purchasing Entities are solely responsible for ensuring all required information is provided on their Purchase Order.

**2.3. Effect of Purchase Orders.** Upon Contractor's acceptance of a Purchase Order issued by a Purchasing Entity, a Contract is formed between the parties for the Goods or Services, or both, identified in such Purchase Order. In no event will the State be liable for Purchase Orders, Contracts, or any other type of purchases made by a Purchasing Entity that is not an agency of the State of Oregon. Purchasing Entities that are not agencies of the State of Oregon are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by Purchasing Entities that are not State Agencies or any other third parties.

**2.4. Verification of Purchasing Entities.** Contractor or Subcontractor is responsible for verifying that it provides Goods and Services under the Participating Addendum only to Purchasing Entities. It is the responsibility of the Participating Entity to verify eligibility for any other Purchasing Entity. Contractor may verify that a particular entity is an ORCPP member online 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>.

**2.5. State of Oregon Agencies: Funds Available/Appropriations.** The payment obligations of an agency of the State of Oregon ("State Agency") ordering Goods or Services, or both, under this Participating Addendum are conditioned upon the applicable State Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the applicable State Agency, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract issued under this Participating Addendum. Contractor is not entitled to receive payment under this Participating Addendum

or any Contract from any part of Oregon state government other than the State Agency that issued the applicable Purchase Order. Nothing in this Participating Addendum or any Contract entered into by a State Agency 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. Upon issuance of a Purchase Order by a State Agency, such Agency represents that it has sufficient appropriations for the current biennium to make payments for the Goods or Services, or both, purchased under any Contract formed pursuant to this Participating Addendum.

**3. Goods and Services: Specifications.** Contractor shall deliver all Goods and Services in accordance with the specifications set forth in Exhibit 4 to the Participating Addendum.

**3.1. Standard and Necessary Components.** Contractor shall include all components that are standard and necessary for the proper assembly, installation, and operation of the Goods.

**3.2. New, Used, and Remanufactured Goods.** Unless specified otherwise in a Purchase Order, Contractor shall deliver only those Goods that are new and unused. In the event a Purchasing Entity agrees, in a Purchase Order, to procure used, remanufactured, or refurbished, Goods, Contractor's offer, warranties, and Services related to such Goods must comply with Section 2.2 of the RFP. The terms of Section 2.2 of the RFP are incorporated by reference as though fully set forth in this Section, and such terms are in addition to any applicable terms set forth in these Oregon Terms.

**3.3. RESERVED**

**3.4. Non-Conformance.** If any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify the Purchasing Entity of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. In such instances the Purchasing Entity may elect to (a) reject the Goods in whole or in part, or (b) revoke its acceptance of Goods in whole or in part. If the Purchasing Entity Rejects or Revokes its acceptance of Goods, Contractor shall remove the particular Goods from the Purchasing Entity's possession at no cost to the Purchasing Entity and shall reimburse the Purchasing Entity for all payments made for those Goods.

**4. Delivery of Goods.**

**4.1. Location.** Contractor shall deliver Goods to a Purchasing Entity at the location identified in the applicable Purchase Order.

**4.2. Freight Fees.** Contractor shall deliver Goods F.O.B., place of destination, freight prepaid.

**4.3. Risk of Loss.** Contractor shall retain the risk of loss for the Goods until the Purchasing Entity has Accepted the Goods in accordance with Section 5.1 of these Oregon Terms.

**4.4. Time for Delivery.** Contractor shall deliver all Goods no later than 60 Calendar Days from the date the Purchasing Entity issues a Purchase Order, or any other date Contractor and purchasing agree to in the Purchase Order. If the 60<sup>th</sup> Calendar Day falls on a weekend or other State of Oregon holiday, delivery shall be made the next Business Day. Unless otherwise specified in the applicable Purchase Order, the time of delivery may occur any time between 9am and 5pm pacific time.

**4.5** All pricing includes delivery. All deliveries are F. O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss and damage shall remain the Contractor's until final inspection and acceptance of the Goods, at which time responsibility and liability for loss and damage shall pass to the Purchasing Entity, except as to latent defects, fraud and Contractor's warranty obligations.

**5. Acceptance, Rejection and Revocation of Acceptance of Goods.**

**5.1. Acceptance.** Purchasing Entities shall have 30 Business Days after either (a) the date of delivery, or (b) if required, the date of installation, to conduct an inspection of the Goods. If a Purchasing Entity does not provide written notice of Acceptance or Rejection of the Goods to Contractor within the 30 Business Days after, as applicable, the date of delivery or date of installation, of the Goods, the Purchasing Entity will be deemed to have "Accepted" the Goods.

**5.1.1.** In the event that a Purchasing Entity is responsible for installing any Goods procured under the Participating Addendum, such Purchasing Entity shall have five Business Days after delivery to install of such Goods. Effective as of the sixth Business Day after Delivery of such Goods, the 10 Business Day acceptance period set forth in Section 5.1 shall commence.

**5.2. Rejection.** If a Purchasing Entity rejects Goods, it shall provide written notice of rejection within 15 Business Days after delivery of such Goods. All notices of rejection shall, at a minimum, itemize the apparent defects and include:

**5.2.1.** A description of the nonconformance between the Goods delivered and the required Specifications and warranties;

**5.2.2.** A description of any other nonconformance of the Goods (including, but not limited to, late delivery); and

**5.2.3.** A statement indicating whether Contractor may cure the nonconformance and if so, the method by which and time period within which Contractor may cure

**5.3. Revocation of Acceptance.** Notwithstanding a Purchasing Entity's Acceptance of Goods, a Purchasing Entity may revoke its Acceptance of Goods for nonconformance with the Specifications if such nonconformance could not have been reasonably been discovered within the time period for Acceptance as set forth in Section 5.1 of these Oregon Terms when subject to normal use and operation during such period. Any and all notices of Revocation shall include the same information required of a notice of Rejection as set forth in Section 5.2 of these Oregon Terms.

**5.4. Effect of Rejection or Revocation of Acceptance.** If a Purchasing Entity Rejects or Revokes its Acceptance of Goods, Contractor shall refund all payments the Purchasing Entity has made to Contractor for those Goods and shall, at no cost to the Purchasing Entity, remove the Goods from the Purchasing Entity's possession within 15 Business Days following the later of (a) the date of the Purchasing Entity's notice of Rejection or notice of Revocation of Acceptance, (b) or the date of Contractor's failure to cure if cure is permitted. In the event Contractor does not remove the Rejected or Revoked Goods within 15 Business Days of receipt of the Purchasing Entity's notice of Rejection or Revocation of Acceptance, the Purchasing Entity shall have the right, without any liability to Contractor, to dispose of such Goods as determined in its sole discretion. Notwithstanding a Purchasing Entity's right of disposal, Contractor shall reimburse the Purchasing Entity for all payments made by the Purchasing Entity for such disposed goods. Nothing contained in this Section or the Participating Addendum precludes a Purchasing Entity from pursuing any remedies to which either may be entitled upon Rejection or Revocation of Acceptance of Goods or otherwise under the Participating Addendum.

**6. Invoices and Payment Provisions.**

**6.1. Invoices.** Contractor may invoice Purchasing Entities upon delivery of Goods or Service Acceptance. Invoices must be delivered to the physical address identified in the applicable Purchase Order. All invoices must include all of the following information:

- a. Applicable Purchase Order Number
- b. Description of Goods Delivered
- c. Quantity of Goods ordered
- d. Quantity of Goods delivered
- e. Price per unit
- f. Services Ordered and Delivered
- g. Price/rate charged for Services
- h. Total Price invoiced
- i. Address to which payment must be remitted

**6.2. Payment of Invoices.** Invoices must be paid, subject to Acceptance made in accordance with Section 5.1 of these Oregon Terms, by Purchasing Entities within 30 days of delivery of the applicable Goods. Any interest for overdue payment is subject to ORS 293.462.

**6.2.1.** Purchasing Entities shall have the right to pay invoices as follows:

**(a)** Credit Card:

VISA: X

Master Card: X

Other Credit Cards: (American Express)

**(b)** Direct Deposit (e.g., ACH), Electronic Funds Transfer (EFT) or

**(c)** Check



7. **Contractor to Provide Customer Service.** The Contractor shall maintain a contract website with a link dedicated to the Participating Entity. The purpose of this website is to inform the Participating and Purchasing Entity of the specific products, services, pricing, and discounting offered through this PA. This website shall also include the contact information for the Authorized Dealers. The website shall be implemented within thirty (30) days of execution of this PA.

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

**8.1. Volume Sales Reports (VSRs).** Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) calendar days from the end of each calendar quarter

**8.1.1. Content of VSRs.** Each and every VSR must include all of the following information:

(a) Complete and accurate details of all receipts (sales and refunds) for the reported period;

(b) The information as identified in the Volume Sales Report Template - Data Requirement, Format and Layout, attached to the Participating Addendum as Exhibit 5 and incorporated by reference in this Section ; and

(c) Such other information as DAS PS may reasonably request from time to time

**8.1.2 Format of VSRs.** Contractor shall provide all VSRs in MS Excel (.xls) format.

**8.1.3 VSRs Required Regardless of Sales Volume.** Contractor shall deliver a VSR to the Participating Entity each quarter, regardless of whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

**8.1.4 Approval and Review of First VSR.** The VSR submitted by the Contractor for the first calendar quarter must be submitted to the Participating Entity's Contract Administrator for review and approval.

**8.1.5 Method of Delivery of VSRs.** All VSRs must be submitted by e-mail to [VCAF.REPORTING@oregon.gov](mailto:VCAF.REPORTING@oregon.gov). 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. Approval from the Participating Entity's Contract Administrator must be obtained for deviations from the requirements set forth in this Section 8.6.

**8.1.6 Right to Review After Receipt or Acceptance.** The Participating Entity's Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Participating Addendum shall not preclude the Participating Entity from requesting, in accordance with Section 8.1.6 of these Oregon Terms, an audit or otherwise requesting documentation to validate the accuracy of a VSR.

**8.1.7 Failure to Submit VSRs.** The Participating Entity reserves the right to terminate this Participating Addendum if volume sales reports are not submitted in accordance with this Section 8.1.7

**8.2. Vendor Collected Administrative Fee (VCAF).**

**8.2.1. VCAF Amount.** The Vendor Collected Administrative Fee (VCAF), is a charge equal to Two Percent (2.0 %) of Contractor's Gross total sales, less any credits, made to Purchasing Entities during the calendar quarter.

**8.2.2. Payment Due Date.** During the Term of this Participating Addendum and for the sales during the last calendar quarter of the Term of this Participating Addendum, the Contractor shall remit VCAF payment to the Participating State within forty-five (45) Calendar Days after the end of each calendar quarter.

**8.2.3. No Additional Line Item Fees.** Contractor may not reflect the VCAF fee as a separate line item charge to Purchasing Entities. Contractor's prices set forth in Exhibit 4 to the Participating Addendum reflects all Contractor's charges to Purchasing Entities. For the purposes of this Participating Addendum, quarters end March 31, June 30, September 30, and December 31. The Participating Entity will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of the entity that actually reports or makes VCAF payment to the Participating Entity.

**8.2.4. Remittance and Payment Format** The fee 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 (email shall suffice) by the Contract Administrator.

**8.2.5. Interest.** Any payments Contractor makes or causes to be made to the Participating Entity 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 has been paid in full. The Participating Entity's right to interest on late payments shall not preclude the Participating Entity from exercising any of its other rights or remedies pursuant to this Participating Addendum or otherwise with regards to Contractor's failure to make timely remittances.

**8.3. Audit Rights.** The Participating Entity at 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 specifically related to the performance of this contract, as such term is defined

in Section 1 above, and other pertinent data, to determine and verify the figures reported in any and all VSRs furnished by Contractor. In the event that any such audit reveals underpayment of any Vendor Collected Administrative Fee, Contractor shall pay the amount of deficiency, together with interest thereon at the rate provided in Section 10.2.5, within five Calendar Days of date of Participating Entity's written request. In the event an audit reveals underpayment of the VCAFs owing, Contractor shall also pay, as set forth in the Participating Entity's written request, the reasonable cost of any and all audits revealing underpayment.

9. **Confidential Information.** Contractor acknowledges that it and its employees, agents, or subcontractors may, in the course of providing and performing the Services under this Participating Addendum, be exposed to or acquire information that is confidential to a Purchasing Entity or a Purchasing Entity's clients. Any and all information of any form obtained by Contractor or its employees, subcontractors, or agents in the performance of this Participating Addendum, including Purchasing Entity Data, is deemed to be confidential information of the Purchasing Entity as are any reports or other documents or items (including data aggregations) that result from the use of Purchasing Entity Data (collectively, "Confidential Information").

9.1. **Excluded from Confidential Information.** Confidential Information does not to include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by the Purchasing Entity to others without restrictions similar to those imposed by this Participating Addendum; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Participating Addendum; (iv) is obtained from a source other than the Purchasing Entity without the obligation of confidentiality, (v) is disclosed with the prior written consent of the Purchasing Entity, or; (vi) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

9.2. **Non-Disclosure.** Contractor, its employees, agents, and subcontractors shall hold Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to the Purchasing Entity hereunder, and shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Participating Addendum, and Contractor will at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Purchasing Entity disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Participating Addendum, and that upon termination

of this Participating Addendum or at Purchasing Entity's request, Contractor shall deliver to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Participating Addendum, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

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

10.3.1 In addition to and without limiting the generality of Sections 10 and 10.3 above of these Oregon Terms, Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Participating Addendum. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly authorized in writing by Purchasing Entity, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

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

10.3.3 Contractor shall require the compliance of its employees, agents, and subcontractors with this Section 10.3.

**10.4 Prohibition on Data Mining.** Contractor shall not capture, maintain, scan, index, share or use Purchasing Entity Data stored or transmitted by the Goods, 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 the data mining or processing of data, stored or transmitted, or both, by the Goods, 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 Participating Addendum.

**10.5 Security and Hosting Requirements / Non-Disclosure Agreement / Criminal Background Checks.** Upon request by any Purchasing Entity, Contractor and its employees, agents, and subcontractors performing services under this Contract shall comply with the security and confidentiality requirements set forth in this Section 10.5 below.

**10.5.1 Security Requirements.** Contractor shall comply at all times with Payment Card Industry security and other rules regarding the processing of debit and credit cards.

**10.5.2 Non-Disclosure Agreement.** Contractor shall upon Purchasing Entity's request provide a written non-disclosure agreement and obtain such from Contractor's employees, agents, and subcontractors performing Services under this Participating Addendum.

**10.5.3 Criminal Background Check.** Contractor's employees, agents and subcontractors that will perform Services under this Contract must submit to a criminal background check upon request by the agency contracting for such services. Such background check must occur prior to arrival on the premises of a Purchasing Entity or prior to access of a Purchasing Entity's Confidential Information, whichever occurs first. It is the responsibility of the Contractor to obtain such criminal background check by and FCRA compliant agency and keep the record on file for 5 years. Purchasing Entity in its sole discretion has the right to reject any Contractor employee, agent, or subcontractor, or limit any such person's access to the Purchasing Entity's premises based on the results of the background check.

**10.5.4 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to the Purchasing entity that is inadequately compensable in damages. Accordingly, a Purchasing entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the Purchasing Entity and are reasonable in scope and content.

**10.5.5 Publicity.** Contractor agrees that it will not disclose the form, content, or existence of this Contract in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with a Purchasing Entity, the Participating Entity, or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement of Contractor's services by the Purchasing Entity, the Participating Entity, or the State of Oregon, without the prior written consent of the foregoing.

**11. Contractor's Proprietary Information; Oregon Public Records Laws.** A Purchasing Entity will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Contract and applicable state and federal law. Contractor acknowledges and agrees any disclosures of its proprietary information that Contractor makes under this Contract that are not otherwise protected by applicable law are subject to the Oregon Public Records Laws, including ORS 192.410-192.505, and the provisions for the custody and maintenance of public records, ORS 192.005 - 192.170.

**11.1 Identification of Proprietary Information.** Contractor proprietary information is any information marked or designated in writing by Contractor as "confidential" prior to initial

disclosure, or information disclosed orally that is confirmed in writing as "confidential" within 10 (ten) Calendar Days of disclosure.

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

**11.3 Excluded from Proprietary Information.** The confidentiality obligations imposed by this Section do not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information known to the recipient prior to the effective date of this Contract without obligation of confidentiality; (iv) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Purchasing Entity is required to disclose Contractor proprietary information under clause (v), Purchasing Entity will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.

**11.4 Injunctive Relief.** Purchasing Entity acknowledges that Purchasing Entity's use and disclosure of Contractor's proprietary information not in accordance with this Section will cause irreparable injury to Contractor that is inadequately compensable in damages. Accordingly, Contractor may seek and obtain injunctive relief against the breach or threatened breach of this Section 11. Purchasing Entity acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Contractor and are reasonable in scope and content.

**12. Representations and Warranties.** Effective upon acceptance of a Purchase Order by Contractor, a Contract is formed between Contractor and the Purchasing Entity that issued the applicable Purchase Order and as a result, such Purchasing Entity is entitled to rely upon all of the representations and warranties, rights, remedies, and benefits under this Participating Addendum. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to each Purchasing Entity upon formation of a Contract and to Authorized Purchaser that:

**12.1 Enforceability of Participating Addendum.** Contractor has the power and authority to enter into and perform this Participating Addendum and any resulting Contract between a Purchasing Entity and Contractor and that this Participating Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

**12.2 Participating Addendum.** Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance, regulation, or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of Services or Goods, and Contractor's provision of the Services or Goods shall not violate any such law, ordinance, regulation, or order;

**12.3 Necessary Licenses.** Subcontractors are duly licensed to perform the Services and provide the Goods and shall maintain any applicable licenses throughout the term of the Participating Addendum and if there is no licensing requirement for the provision of the Goods or performance of the Services, is duly qualified and professionally competent to perform the Services and provide the Goods;

**12.4 No Liens.** All Goods are free and clear of any liens or encumbrances, and Contractor has full legal title to such Goods, and no other person has any right, title or interest in the Goods which is superior to or infringe upon the rights granted to a Purchasing Entity hereunder.

**12.5 Authorized Use.** When used as authorized by this Participating Addendum, a Purchasing Entity's use of the Goods shall not infringe any copyright, patent, trade secret or other proprietary right of any third party;

**12.6 Manufacturer Warranties.** Contractor shall transfer to Purchasing Entity all manufacturer warranties covering the Goods at time of delivery at no charge;

**12.7 Performance.** 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; and

**13. Warranties Cumulative.** The warranties set forth 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 Authorized Purchaser the broadest warranty protection available.

**14. Compliance with Applicable Law.** Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Goods provided and Services performed under this Participating Addendum, and a Purchasing Entity's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270. In addition, Contractor warrants the Good and Services provided under this Participating 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. Contractor also agrees to comply with (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) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**15. Reserved.**

**16. Public Works.** Where installation services are a public work as defined in ORS 279C.800 to ORS 279C.810, the Contractor (for all installation services performed in connection with and at the site of the public works project) and all subcontractors (for all installation services performed in connection with and at the site of the public works project) shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates.

16.1. Before starting Work the Contractor (directly or through its subcontractor) shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work".

16.2. Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. When required by statute, Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

16.3. In accordance with ORS 279C.845, the Contractor (if it has workers who perform work in connection with and at the site of the public works project) and every Subcontractor (if it has workers who perform work in connection with and at the site of the public works project ) shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

16.4. Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1 if the Contractor is so required to file. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

16.5. Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement, Within 14 days after the first-tier Subcontractor files the required



certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection. DAS General Conditions (1/1/2012) Page 11 DM1735383-v3

16.6. In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

16.7. Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

16.8 In the event of any conflict between the provisions of this Section and Oregon law in effect at the time of performance, including administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, Oregon law controls.

## **17. Indemnities.**

**17.1 General Indemnity.** The Contractor shall indemnify, keep and save harmless the Customer, its directors, members, agents, officers, and employees for losses, liability, damages, costs, and expenses (including reasonable costs of litigation and reasonable attorneys' fees) (collectively, the "Losses") arising from third-party claims for bodily injury, death, or tangible property damage, to the extent that such Losses are caused by the negligence or willful misconduct of Contractor in the performance of this Contract by Contractor; provided, that provided that the Customer shall give the Contractor prompt written notice of any such third-party claim or lawsuit for which indemnification is sought hereunder, cooperate in the defense thereof, and grant the Contractor the right to defend, settle, or alternatively dispose of such claim or lawsuit, including, without limitation, the right to select legal counsel.

**17.2 Infringement Indemnity.** Contractor will, at Contractor's sole expense, 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 costs, damages, settlements, 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 Purchase Order infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally intellectual property right of any third party ("**Intellectual Property Rights**")

17.2.1 If Contractor believes at any time that the Goods or Services infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Purchasing Entity's prior written consent, which Purchasing Entity will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Purchasing Entity the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Goods continue to function in material conformance with the specifications set forth in this Participating Addendum. Contractor's failure or

inability to accomplish any of the foregoing will be deemed a material breach of this Participating Addendum, and Purchasing Entity may pursue any rights and remedies available to it under this Participating Addendum, including termination.

17.2.2 Contractor will not be liable under this Section for any claim for infringement based solely on (a) Purchasing Entity's modification of the Goods, or (b) Use of the Goods not authorized by Contractor, or both.

**18. Control of Defense and Settlement.** Contractor's obligation to indemnify Purchasing Entity as set forth in Section 17 above of these Oregon Terms, is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 17; 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, 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 (a) Contractor is prohibited from defending the State of Oregon, (b) is 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. The State of Oregon will assume the costs and expenses of its own defense under subsection (c) of the foregoing sentence.

## **19 Events of Default and Remedies.**

**19.1 Default by Contractor under Participating Addendum.** Contractor will be in default under this Participating Addendum if:

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

19.1.2 Contractor commits any material breach of any covenant, warranty, obligation or certification under this Participating Addendum, fails to provide the Goods or to perform the Services in conformance with the specifications and warranties provided in this Participating Addendum, or clearly manifests an intent not to perform future obligations under this Participating Addendum, and such breach, failure to provide or perform, or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance, within thirty (30) Business Days, or such longer period as the Participating Entity may specify in writing, after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Participating Entity's written notice of such breach, failure to provide or perform, default, or manifestation of intent.

**19.2 Default by Contractor under a Contract.** Contractor will be in default under a Contract if:

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

19.2.2 Contractor commits any material breach of any covenant, warranty, obligation or certification under the applicable Contract, fails to provide the Goods or to perform the Services in conformance with the specifications and warranties provided pursuant to the applicable Contract, or clearly manifests an intent not to perform future obligations under the applicable Contract, and such breach, failure to provide or perform, or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance, within 30 Business Days, or such longer period as Purchasing Entity may specify in writing, after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Purchasing Entity's written notice of such breach, failure to provide or perform, default, or manifestation of intent.

**19.3 Default by Purchasing Entity under Participating Addendum.** Purchasing Entity will be in default under this Participating Addendum if:

19.3.1 Purchasing Entity fails to pay Contractor any amount pursuant to the terms of this Participating Addendum, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Contractor's notice or such longer period as Contractor may specify in such notice; or

19.3.2 Purchasing Entity commits any material breach or default of any covenant, warranty, or obligation under this Participating Addendum, fails to perform its commitments under this Participating Addendum within the time specified or any extension thereof, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Contractor's notice or such longer period as Contractor may specify in such notice.

**19.4 Default by Purchasing Entity under a Contract.** Purchasing Entity will be in default under a Contract if:

19.4.1 Purchasing Entity fails to pay Contractor any amount pursuant to the terms of the applicable Contract, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Contractor's notice or such longer period as Contractor may specify in such notice; or

19.4.2 Purchasing Entity commits any material breach or default of any covenant, warranty, or obligation under the applicable Contract, fails to perform its commitments

under the applicable Contract within the time specified or any extension thereof, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Contractor's notice or such longer period as Contractor may specify in such notice.

**19.5 Default by Participating Entity under Participating Addendum.** Participating Entity will be in default under this Participating Addendum if Purchasing Entity commits any material breach or default of any covenant, warranty, or obligation under this Participating Addendum, fails to perform its commitments under this Participating Addendum within the time specified or any extension thereof, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery (as provided for in Section 24 below of these Oregon Terms) of Contractor's notice or such longer period as Contractor may specify in such notice.

### **19.6 Participating Entity and Purchasing Entity Remedies for Default**

**19.6.1 Participating Entity's Remedies.** In the event Contractor is in default under Section 19.1 of these Oregon Terms, Participating Entity may at its option, pursue any or all of the remedies available to it under this Participating Addendum and at law or in equity, including, without limitation:

19.6.1.1 Terminate the Participating Addendum in accordance with Section 20.2.3 (c) of these Oregon Terms;

19.6.1.2 With respect to a breach of Section 19.3, (a) exercise the right of set-off, and withholding amounts due and owing to Contractor, in an amount equal to the Purchasing Entity's setoff right, without penalty and (b) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Participating Addendum, including but not limited to direct damages, costs of cure, and costs incurred in securing replacement Services or Goods, or both; and

19.6.1.3 Exercise any or all of the tax compliance remedies set forth in Section 7 of the Participating Addendum.

**19.6.2 Purchasing Entity Remedies.** In the event Contractor is in default of a Contract under Section 19.2 of these Oregon Terms, the Purchasing Entity to the applicable Contract may at its option, pursue any or all of the remedies available to it under the Participating Addendum and at law or in equity, including, without limitation:

19.6.2.1 Termination of the applicable Contract;

19.6.2.1.1 Withholding or offsetting payment for erroneous invoices for the Services that Contractor is obligated but has failed to perform in accordance with this Participating Addendum, including warranties in Section 13;

19.6.2.1.2 Exercise of its right of setoff against the compensation invoiced and due to Contractor under the applicable Contract;

19.6.2.1.3 With respect to a breach of Section 19.3, (a) exercise the right of set-off, and withholding amounts due and owing to Contractor, in an amount equal to the Purchasing Entity's setoff right, without penalty and (b) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of the applicable Contract, including but not limited to direct, damages, costs of cure, and costs incurred in securing replacement Services or Goods, or both; and

19.6.2.1.4 Exercise any or all of the tax compliance remedies set forth in Section 7 of the Participating Addendum.

**19.6.3 Remedies Not Exclusive.** The remedies afforded to the Participating Entity and Purchasing Entities as set forth in the Sections 19.6.1 and 19.6.2, as applicable, are cumulative to the extent the remedies are not inconsistent and each of them, or both of them, may pursue any of their respective remedies singly, collectively, successively or in any order whatsoever.

19.6.3.1 If it is determined for any reason that Contractor was not in default under Section 19.1 above of these Oregon Terms, the rights and obligations of the Contractor and Participating Entity will be the same as if the Participating Addendum was terminated pursuant to Section 20 below of these Oregon Terms.

19.6.3.2 If it is determined for any reason that Contractor was not in default of a Contract under Section 19.2 above of these Oregon Terms, the rights and obligations of the Contractor and Purchasing Entity will be the same as if the Contract was terminated pursuant to Section 21 below of these Oregon Terms.

## **19.7 Contractor Remedies.**

19.7.1 In the event a Purchasing Entity (a) terminates a Contract pursuant to Sections 0.1, 21.2.2, or 21.2.3, below, of these Oregon Terms, or (b) is in default under Section 04 of these Oregon Terms, and regardless of whether Contractor elects to exercise its right to terminate a Contract under Section 21.2.4 below of these Oregon Terms, Contractor's sole monetary remedy will be a claim for any unpaid invoices for the Goods or Services completed, delivered and Accepted. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve any Purchasing Entity from its obligations to purchase Goods or Services that were entered prior to the date of any such termination.

19.7.2 In the event Participating Entity is in default under Section 19.5 of these Oregon Terms, Contractor may at its option, pursue any or all of the remedies available to it under this Participating Addendum and at law or in equity, including, without limitation:

19.7.2.1 Terminate the Participating Addendum in accordance with Section 20.2.4 of these Oregon Terms;

19.7.2.2 Initiate an action or proceeding for damages, specific performance, declaratory or injunctive relief.

19.7.3 The remedies afforded to the Contractor as set forth in this Section 19.7 are cumulative to the extent the remedies are not inconsistent, and Contractor may pursue any of their respective remedies singly, collectively, successively or in any order whatsoever.

## **20. Term and Termination of Participating Addendum.**

**20.1 Term of Participating Addendum.** The term of this Participating Addendum shall be co-terminus with the NASPO ValuePoint Master Agreement MA146. This Participating 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.

### **20.2 Termination of Participating Addendum.**

20.2.1 Participating Entity and Contractor may agree to terminate this Participating Addendum upon at least 30 days prior written agreement.

20.2.2 Participating Entity may terminate this Participating Addendum, in whole or in part, at any time upon thirty (30) days prior written notice to Contractor.

20.2.3 Participating Entity may also terminate this Participating Addendum , in whole or in part, upon written notice to Contractor, immediately, or at such later date as Participating Entity may establish in such written notice, unless a later date is required pursuant to Section 19, above, in which case Section 19 shall control, , upon the occurrence of any of the following events:

- (a) Participating Entity fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods or Services to be purchased under the Participating Addendum ; or
- (b) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods or Services, or both under this Participating Addendum are prohibited or the Participating Entity is prohibited from paying for such Goods or Services from the planned funding source; or
- (c) Contractor is in default under Section 0 above of these Oregon Terms.

20.2.4 Contractor may terminate this Participating Agreement upon written notice to Participating Entity, as required pursuant to Section 19.5, above, if Participating Entity is in default under Section 19.5 of these Oregon Terms. If contractor terminates the Participating Addendum under this sub-section, contractor shall remain liable for performance of all outstanding contracts

**20.3 Stop Performance Upon Termination.** Upon receipt of written notice of termination, Contractor will stop performance under all Contracts as directed by Participating Entity.

**20.4 Remedies Not Exclusive.** Termination under any provision of this Participating Addendum does not extinguish or prejudice any party's right to enforce this Participating Addendum, or a Contract or Purchase Order entered into prior to the date of termination with respect to any breach of any warranty or any defect in or default of performance that has not been cured, including any rights that extend beyond the termination of the Participating Addendum such as the right to indemnification. If this Participating Addendum, is so terminated, the Participating Entity will pay Contractor in accordance with the terms of this Participating Addendum.

## **21. Term and Termination of Individual Contracts.**

**21.1 Term of Individual Contracts.** An individual Contract will remain in effect until the expiration or termination of the Contract in accordance with its terms. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve any Purchasing Entity from its obligations to purchase Goods or Services that were entered prior to the date of any such termination.

### **21.2 Termination of a Contract.**

21.2.1 Any Contract may be terminated at any time by mutual written consent of Purchasing Entity and Contractor.

21.2.2 Any Purchasing Entity may, at its sole discretion, terminate, in whole or in part, any Contract such Purchasing Entity has entered into with Contractor upon 30 days prior written notice to Contractor.

21.2.3 Any Purchasing Entity may terminate in whole or in part, any Contract such Purchasing Entity has entered into with Contractor upon written notice to Contractor, immediately, or at such later date as Purchasing Entity may establish in such written notice, unless a later date is required pursuant to Section 19, above, in which case Section 19 shall control, upon the occurrence of any of the following events:

- (a) Purchasing Entity fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for the Goods or Services, or both, to be purchased under a Contract;
- (b) Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods or Services, or both, under a Contract is prohibited or Purchasing Entity is prohibited from paying for such Goods or Services, or both, from the planned funding source; or
- (c) Contractor is in default under Section 19.2 above of these Oregon Terms.

21.2.4 Contractor may terminate a Contract if a Purchasing Entity is in default under Section 19.4 of these Oregon Terms.

**21.3 Effect of Termination of a Contract.** Upon receipt of written notice of termination of a Contract, Contractor will stop performance under such Contract as directed by the Purchasing Entity.

**21.4 Remedies Not Exclusive** Termination of a Contract does not extinguish or prejudice any party's right to enforce the applicable Contract with respect to any breach of any warranty or any defect in or default of performance that has not been cured, including any rights that extend beyond the termination of Contract such as the right to indemnification, if applicable. In addition, termination of a Contract does not extinguish or prejudice any party's right to enforce any other rights or remedies it has under the applicable Contract. If a Contract is so terminated, the Purchasing Entity will pay Contractor in accordance with the terms of the Contract for Goods delivered and Services performed and Accepted by Purchasing Entity.

## **22. Limitation of Liability.**

### **22.1 To Participating Entity.**

22.1.1 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 0, GENERAL INDEMNITY, (ii) SECTION 0 IP INDEMNITY, (iii) SECTION 9, CONFIDENTIAL INFORMATION OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS MISCONDUCT, OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY TO PARTICIPATING ENTITY FOR DAMAGES FOR ANY OTHER CAUSE WHATSOEVER IS LIMITED TO \$50,000.

22.1.2 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 0 GENERAL INDEMNITY, (ii) SECTION 0, IP INDEMNITY (iii) SECTION 9, CONFIDENTIAL INFORMATION (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER CONTRACTOR NOR PARTICIPATING ENTITY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

### **22.2 To Purchasing Entity.**

22.2.1 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 0, GENERAL INDEMNITY, (ii) SECTION 0 IP INDEMNITY, (iii) SECTION 9, CONFIDENTIAL INFORMATION, OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS MISCONDUCT, OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY TO PURCHASING ENTITY FOR DAMAGES FOR ANY OTHER



CAUSE WHATSOEVER IS LIMITED TO TWO AND ONE-HALF TIMES THE TOTAL FEES PAYABLE BY THE PURCHASING ENTITY UNDER THE APPLICABLE CONTRACT.

22.2.2 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 17.1 GENERAL INDEMNITY, (ii) SECTION 17.2, IP INDEMNITY (iii) SECTION 10, CONFIDENTIAL INFORMATION OR (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER CONTRACTOR NOR PURCHASING ENTITY BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

### **22.3 To Contractor.**

22.3.1 ANY CONTRACT ENTERED INTO BY CONTRACTOR AND A STATE AGENCY FOR A CAPITAL LEASE SHALL BE VOID AND THE STATE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY SUCH LEASE.

22.3.2 Nothing in this Participating Addendum or in any Contract may be construed to permit 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.

**23 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)).

### **24. Notices.**

**24.1 To Purchasing Entity.** Any formal communications between Contractor and a Purchasing Entity or notices to be made under a Contract shall be given in writing to the person and address indicated in the Purchase Order pursuant to which the applicable Contract was formed.

**24.2 To Participating Entity.** Any formal communications between Contractor and Participating Entity or notices to be made under the Participating Addendum shall be given to the Contract Administrator identified in Section 24.3 of the Participating Addendum:

**24.3 To Contractor.** All formal communications or notices required to be given between Contractor and Purchasing Entity under a Contract, or between Contractor and Participating Entity under the Participating Addendum, shall be given to the following person and address:

**Contract Financial Analyst : Chris McCormick**

**Title: The HON Company**  
**Address: 200 Oak Street,**  
**Muscataine, IA 52761**

Phone: 563-272-3954

**24.4 Means and Effective Date of Delivery.** All such communications and notices shall be delivered and made effective as follows:

24.4.1 via U.S. Postal Services, postage pre-paid, shall be effective 5 Business Days after mailing;

24.4.2 via personal delivery shall be effective upon actual delivery;

24.4.3 via express parcel or other express commercial carrier, fees pre-paid, shall be effective within two Business Days after placing with such carrier.

**25. Governing Law.** This Participating Addendum and any and all Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

**26. Jurisdiction and Venue:**

**26.1 Participating Entity and State Agency Purchasing Entities.** Any claim, action, suit or proceeding (individually and collectively, "**Claims**") between Contractor and the Participating Entity, or between Contractor and any Purchasing Entity that is a State Agency, that arises from or relates, as applicable, to this Participating Addendum or a Contract, or both, 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 PURCHASE 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 based on the eleventh amendment to the Constitution of the United States or otherwise, with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

**26.2 ORCPP Members.** Any Claims between Contractor and a Purchasing Entity that is an ORCPP Member ("**ORCPP Purchasing Entity**") that arise from or are related to individual a Contracts will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such ORCPP Purchasing Entity resides or has its principal office, or at such ORCPP Purchasing Entity's option, within such other county as the ORCPP Purchasing Entity will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claims 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. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**26.3 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 Participating Addendum. A Purchasing Entity may withhold final payment under a Contract until Contractor has provided the Oregon Department of Revenue with the required information.

## **27. Merger Clause; Waiver.**

**27.1 Participating Entity.** As to Contractor and Participating Entity, the Participating Addendum, including the Master Agreement and all applicable Exhibits, Attachments, and Schedules thereto, constitutes the entire agreement between Contractor and Participating Entity on the subject matter hereof, and supersede 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 Participating Addendum. No waiver, consent, modification or change of terms of this Participating Addendum binds either party unless in writing and signed by both Contractor and the Participating Entity and all necessary State approvals have been obtained in writing. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of the Participating Entity to enforce any provision of this Participating Addendum does not constitute a waiver by the Participating Entity of that or any other provision.

**27.2 Purchasing Entity.** As to Contractor and a Purchasing Entity, the Contract, including the Participating Addendum, the applicable Purchase Order, the Master Agreement and all applicable Exhibits, Attachments, and Schedules thereto, constitute the entire agreement between Contractor and Purchasing Entity on the subject matter thereof, and supersedes all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between Contractor and Purchasing Entity that are not specified in the applicable Contract. Except as expressly permitted in these Oregon Terms, including, without limitation, Sections 2.5, 19, no Purchasing Entity has any authority or right to waive, consent, modify or change of terms of the Participating Addendum and no such waiver, consent or modification or change binds either party. The failure of the Purchasing Entity to enforce any provision of the Contract does not constitute a waiver by the Purchasing Entity of that or any other provision.

**28. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of a Purchasing Entity or the Participating Entity. Contractor has no right or authority to incur or create any obligation for or legally bind Purchasing Entity or the Participating Entity in any way. Contractor is not an "officer", "employee", or "agent" of any Purchasing Entity or the Participating 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 Contractor, Purchasing Entity, or the Participating Entity 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.

**29. Access to Records.** Contractor will maintain all fiscal records relating to any and all Purchase Orders, Contracts, and the Participating Addendum, in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders, Contracts,

and the Participating Addendum in such a manner as to clearly document Contractor's performance thereunder. The Participating Entity, on behalf of itself and any and all Purchasing Entities, and its respective agents, 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 any Purchase Order, Contract, or the Participating Addendum and have the right to perform examinations and audits and make excerpts and transcripts reasonably necessary to perform such examinations and audits. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) 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 Participating Addendum, whichever date is later.

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

**31. Survival.** Any terms, as applicable, of the Participating Addendum or a Contract, 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, as applicable, the Participating Addendum or applicable Contract.

**32. Insurance.** Within ten (10) days of the Effective Date of the Participating Addendum, Contractor must provide insurance as set forth on Exhibit No. 2 to the Participating Addendum. No Purchase Order may be placed or accepted and no Contract shall be formed until proof is provided that these requirements have been met.

**33. Anticipated Amendments.** Contractor and Participating Entity may need to amend the Participating Addendum to modify selected terms and conditions. The Participating Addendum Agreement may be modified by written document only. No amendment shall be effective until signed by Contractor and Participating Entity and all approvals required by law have been obtained in writing. Product updates and/or price adjustments approved under the Master Agreement will automatically be incorporated into this Participating Addendum.

**34. Subcontracts and assignment.** Contractor must not enter into any subcontracts for any of the Services required by this Contract or assign or transfer any of its interest in this Contract without the Participating Entity's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of the Participating Entity prior to or at the time of Contractor's request for consent. In addition to any other provisions Participating Entity may require, Contractor must include in any permitted subcontract a requirement that the subcontractor be bound by the relevant provisions of the Participating Addendum, including but not limited to requirements of performance, indemnification, and liability, as if subcontractor were

Contractor. Participating Entity's consent to any subcontract will not relieve Contractor of any of its duties or obligations under the Participating Addendum or any Contract.

**35. Successors and assigns.** The provisions of, as applicable, the Participating Addendum or any and all Contracts, will be binding upon and will inure to the benefit of the parties thereto and their respective successors and permitted assigns, if any.

**36. Intended Beneficiaries.** Contractor and Participating Entity are the only parties to the Participating Addendum and are the only parties entitled to enforce its terms. Nothing in the Participating Addendum gives, is intended to give, or must be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name therein and expressly described as intended beneficiaries of the terms of this Contract.

**36.1 Purchasing Entities.** In accordance with Section 36 above, upon the formation of any Contract, the Purchasing Entity to such Contract will be an intended third party beneficiary of the Participating Addendum and shall have all the rights and obligations thereunder as expressly set forth therein.

**37. Headings.** The headings in these Oregon Terms are included only for convenience and do not control or affect the meaning or construction of this Participating Addendum.

## EXHIBIT No. 2

### INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit prior to performing under this Participating Addendum and any Contract and shall maintain it in full force and at its own expense throughout the duration of this Participating Addendum. 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 with an AM Best rating of B+/VII.

**1. Workers' compensation insurance.** All employers, including Contractor, that employ subject workers in the State of Oregon must comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must also ensure that each of its approved subcontractors complies with these requirements.

**2. General liability insurance.** Contractor must obtain and maintain, at its own expense, for the duration of this Participating Addendum and any Contract, general liability insurance with a limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, for each occurrence for bodily injury and property damage. It must include contractual liability coverage for the indemnity provided under this Contract. Limits can be met with the use of umbrella/excess liability.

**3. Automobile liability insurance.** Contractor must obtain, at Contractor's expense, and keep in effect during the term of this Participating Addendum and any Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence must not be less than \$1,000,000.

**4. Additional Insureds.** Each of the insurance policies that Contractor obtains under this Exhibit No. 2 must provide that the State of Oregon, DASPS and their divisions, officers and employees are additional insureds under the policy, but only with respect to the Goods or Services that Contractor will provide under this Participating Addendum and any Contract. Additional Insured applies only in the event of a loss due to Contractor's negligent acts.

**5. Notice of cancellation or change.** Contractor must not cancel, cause a material change in, reduce its limits for or omit or intend not to renew the insurance coverage required under this Participating Addendum without thirty (30) calendar days' prior written notice from Contractor or its insurers to DASPS.

**6. Certificates of insurance.** As evidence of the insurance coverage required under this Participating Addendum, Contractor must furnish acceptable insurance certificates to DASPS before providing the Goods or commencing the Services and annually thereafter. The certificates must specify all of the parties who are additional insureds. Insuring companies must be authorized to sell insurance in the State of Oregon. Contractor must be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance.

**EXHIBIT No. 3**  
**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 42-1491474

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: The HON Company

Signature: Condee Smith Date: 3/6/2019

## **EXHIBIT No. 4**

### **PRICE LIST**

Contractor has a dedicated website for the products approved under this Price Agreement at:  
<https://www.hon.com/market/government/state-local-contracts>.



**EXHIBIT No. 5**  
**VOLUME SALES REPORT TEMPLATE**

