

**NASPO ValuePoint  
PARTICIPATING ADDENDUM #0597  
("Addendum") for  
Commercial Card Services**



**Lead by the State of Washington ("Lead State")**

**Master Agreement #: 00719**

Contractor: U.S. Bank National Association (**Contractor**)

Participating Entity: **State of Oregon**

On June 4, 2019, the State of Washington ("Lead State") issued a Request for Proposal, #00719 on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint"), and other purchasing entities seeking offers from qualified and responsible proposers to provide Commercial Card Services. Lead State executed Master Agreement No. 00719 ("Master Agreement"), which consists of contract terms and conditions and other attachments.

The State of Oregon ("State" or "Oregon") is a member of NASPO ValuePoint. The State, by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS"), on behalf of the State of Oregon and its agencies and the Oregon Cooperative Procurement Program ("ORCPP") members (collectively "Purchasing Entities"), has elected to participate in the Master Agreement, subject to the terms and conditions of this Participating Addendum ("Addendum"). This Addendum is effective when all necessary approvals have been obtained and signed by the parties ("Effective Date"). The term of this Addendum coincides with the Master Agreement unless the Participating Addendum is terminated earlier.

**DAS and Contractor agree:**

- 1. Scope:** This Addendum covers Commercial Card Services led by the State of Washington for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

The following Goods or services are included in this Addendum:

- *All Services listed in the Master Agreement for Category 1, as follows:*

Products Available under this Addendum		
<input checked="" type="checkbox"/> <b>Corporate Travel &amp; Expense Accounts</b>	<input checked="" type="checkbox"/> <b>Purchasing Accounts</b>	<input checked="" type="checkbox"/> <b>One Card™ Accounts</b>
<input checked="" type="checkbox"/> Corporate Liability <input type="checkbox"/> Joint and Several Liability <input checked="" type="checkbox"/> Contingent Liability	Only Corporate Liability	Only Corporate Liability
<b>Estimated Annual Charge</b>	<b>Estimated Annual Charge</b>	<b>Estimated Annual Charge</b>
\$7,000,000	\$ 155,000,000	\$16,000,000
<b>Benefits</b>	<b>Benefits</b>	<b>Benefits</b>
Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> <li>• \$500,000 Standard Account</li> <li>• \$1,000,000 Executive Account</li> </ul>	Card Network benefits	Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> <li>• \$250,000 Standard Account</li> <li>• \$1,000,000 Executive Account</li> </ul>
<b>Optional Enhancements</b>	<b>Optional Enhancements</b>	<b>Optional Enhancements</b>
Event Planner account Managed Spend account Central Billing account	Event Planner account Managed Spend account Central Billing account	Event Planner account Managed Spend account Central Billing account

**Rebate Program.** DAS and Purchasing Entities may participate in Contractor's Rebate Program as described in Master Agreement.

The following Goods or services are not included in this Addendum:  
*None.*

This Addendum contains 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 Addendum, the Master Agreement and Card User Agreement ("CUA"), the following descending order of precedence applies:

- 1) This Addendum, less its exhibits;
- 2) Exhibit No. 1 of this Addendum (State Specific Terms and Conditions);
- 3) Exhibit No. 4 of this Addendum (Federal Terms and Conditions);
- 4) Exhibit No. 2 of this Addendum (Insurance);
- 5) Exhibit No. 3 (Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR)).

Nothing in this Addendum limits the Contractor's obligations under the Master Agreement unless otherwise noted herein. If a Contractor obligation in this Addendum

conflicts with a Contractor obligation of the Master Agreement, the order of precedence in this Section 1 applies.

**2. Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Oregon. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

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

Contractor, Relationship Manager

Name:	Cheryl Mielnicki
Address:	3709 W Jacksonville Drive, Anthem, AZ 85086
Telephone:	623-256-6229
Fax:	
Email:	Cheryl.mielnicki@usbank.com

Contractor, Account Coordinator

Name:	Heather Swanson
Address:	200 S 6 <sup>th</sup> St. Minneapolis, MN 55402   EP-MN-L25C
Telephone:	855-250-6421
Fax:	
Email:	Heather.swanson@usbank.com

Participating Entity

Name of Entity and Contract Administrator:	State of Oregon, Department of Administrative Services, Kaliska King, Procurement Analyst
Address:	1225 Ferry St SE, Salem, Oregon 97301
Telephone:	503.798.1907
Email:	Kaliska.King@oregon.gov

**4. 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, in addition to the provisions in Exhibits No. 1- No. 3 are

modifying or supplementing the Master Agreement terms and conditions.

## **5. Exclusivity; Threshold**

**5.1** Pursuant to the Master Agreement, Purchasing Entities may enter into a Card User Agreement (“CUA”) to obtain the Products and Services. The State of Oregon represents and warrants that the State, on behalf of state agencies, shall enter into only one CUA with Contractor; other Purchasing Entities may acquire the products and services under this PA or from other contractors. Each CUA is separate agreement between the Contractor and the Purchasing Entity. Contractor acknowledges and agrees that the State shall bear no liability on CUAs entered into for purchases by non-State agencies, which liability the State expressly disclaims. Other Purchasing Entities are responsible for any Products or Services they acquire under any CUA that they issue. The State expressly disclaims any liability for purchases made by non-State agency Purchasing Entities or any other entity.

**5.2 Verification of Purchasing Entities:** Contractor shall verify that it provides products and services under this Addendum only to Purchasing Entities authorized by DAS. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

**5.3 Threshold for State Agencies:** Purchasing Entities that are state agencies under the authority of DAS and listed at <https://www.oregon.gov/das/Financial/Acctng/Documents/70.10.00.pdf> may participate under this Addendum for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Purchasing Entities that are agencies of the State of Oregon must obtain all other necessary approvals, including but not limited to legal sufficiency approval, as may be required.

**6. Subcontractors:** Not applicable.

**7. Tax Compliance:** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding the following, including Contractor's payment of taxes, and to the best of the individual's knowledge that: (1) the number shown on the Master Agreement is the Contractor's correct taxpayer identification; (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) 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 and shall, throughout the duration of this Addendum and any extensions, comply 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.

Any violation of this Section constitutes a material breach of this addendum and any contract issued under this Addendum. Any violation shall entitle DAS or Authorized Purchaser to terminate this Addendum or the applicable CUA, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable CUA, and to pursue any or all of the remedies available under this Addendum, the CUA, at law, or in equity, including but not limited to:

- Termination of this Addendum or the applicable CUA 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 Purchasing Entity's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS or Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable CUA, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Products or Services or both.

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

These remedies will not apply until such time as Contractor has exhausted all available Administrative and Legal remedies to contest any assessment.

- 8. Reporting.** 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 Participating Entity or a political subdivision, including (i) garnishing the Contractor's compensation under any CUA entered into pursuant to this Addendum with a State Agency, or other Purchasing Entity as applicable, or (ii) exercising a right of setoff against Contractor's compensation under any CUA entered into pursuant to this Addendum with a State Agency, or other Purchasing Entity as applicable, 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. Purchasing Entity will follow all requirements of the U.S. Treasury Offset Program under ORS 150-305-0350, 26 USC 6402(e), 31 CFR

285.8, 31 USC 3716(h) and CFR 285.6, including, but not limited to, the notice requirements to Contractor.

- 9. Participating Addendum Integration:** This Addendum and the Master Agreement set forth the entire agreement between Contractor and Participating State with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein. Any attempt to modify or add or incorporate terms and conditions inconsistent with, and contrary to, the terms and conditions of this Addendum and the Master Agreement through a CUA or other document is null and void and hereby rejected. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in case of any attempted modifications or inconsistent terms.

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

Participating Entity: State of Oregon, Department of Administrative Services	Contractor: U.S. Bank National Association
Signature: 	Signature: 
Name: Kelly Mix, CPPO	Name: Brad Hoffelt
Title: Deputy Chief Procurement Officer	Title: Senior Vice President
Date: 12-17-2020	Date: December 15, 2020

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	907.723.3360
Email:	Tfosket@NASPOValuepoint.org

***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

### Changes to Master Agreement State-Specific Constitutional, Statutory and Other Requirements

**1. Incorporation of Master Agreement.** Effective Upon the Effective Date of this Addendum and the effective date of any Card User Agreement, Participating State and Purchasing Entities are entitled to rely upon all of the representations and warranties, rights, remedies, and benefits under this the Master Agreement and this Addendum, subject to the State-Specific Constitutional, Statutory and other requirements set forth herein.

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

“ORCPP” means the Oregon Cooperative Purchasing Program. Members include counties, cities, special districts, educational institutions, and other political subdivision of the State of Oregon. Members are authorized to purchase the goods and services available under price agreements or other master agreements entered into by the State.

“Purchasing Entity Data” means information created and information stored by Purchasing Entity through the Services, and information created and collected by Contractor regarding Purchasing Entity and its clients during the course of providing the Services, including Personal Information.

“Purchasing Entity Intellectual Property” means any intellectual property that is owned by Purchasing Entity, including Purchasing Entity Data. Purchasing Entity Intellectual Property includes any derivative works and compilations of any Purchasing Entity Intellectual Property.

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

**3. Rebate Payment Registration.** Each Participating Entity may choose to receive payments in one of three separate manners as set forth below:

- In the form of a Statement credit;
- By check (Participating Entity must provide Contractor with a W-9); or
- By ACH (Participating Entity must provide Contractor with a contact who will register for such ACH payment)

4. **Fees.** Contractor may charge the Participating State and its Participants the fees set forth below. To the extent not addressed below, Contractor may also charge for any fees imposed on Contractor by the applicable Card Networks related to specific transactions and actions. Failure of Contractor to apply any fee set forth in this Participating Addendum at any time does not preclude Contractor from ever applying such fee.

<b>FEES</b>	
<b>Description</b>	<b>Fee</b>
<b>Cash Advance Transaction Fee</b>	2.0% (minimum \$2.00)
<b>Delinquency Fees</b>	
<b><i>Corporate Card, One Card, Purchasing Card</i></b>	
Not paid by 30 days from end of Billing Cycle	0.0% (minimum \$0.00)
Not paid by 60 days from end of Billing Cycle	0.6% (minimum \$2.00)
Not paid by 90 days from end of Billing Cycle	0.6% (minimum \$2.00)
Not paid by 120 days from end of Billing Cycle	0.6% (minimum \$2.00)
Not paid by 150 days from end of Billing Cycle	0.6% (minimum \$2.00)
Not paid by 180 days from end of Billing Cycle	0.6% (minimum \$2.00)
<b>Executive Account Fee</b>	\$0.00 annually, per Account
<b>Expedited Card Delivery Fee</b>	\$0.00, per delivery
<b>Expense Management Fee</b>	\$0.00 annually, per Account
<b>Foreign Transaction Fee</b>	1.00%
<b>Logo Embossing Fee</b>	\$0.00
<b>Non-Sufficient Funds Fee</b>	\$0.00, per occurrence
<b>Receipt Imaging</b>	\$0.00 annually, per Account
<b>Statements</b>	
Paper Statement fee	\$0.00, annually, per Account
Statement copy fee	\$0.00, per copy
Draft copy fee	\$0.00, per copy
<b>Insurance</b>	
Auto Rental Insurance	\$0.00
Travel Accident Insurance	\$0.00
Visa Liability Insurance	\$0.00
Lost Luggage Insurance	\$0.00

5. **Credit Search; Payment Provisions.** Contractor is not permitted to conduct credit searches for any Purchasing Entity that is a State Agency. Financial information for all State Agencies may be found at: <https://www.oregon.gov/treasury/about-treasury/pages/default.aspx>. Late fees, if any, may not exceed 2/3% per month. All payments are subject to ORS 293.462.
6. **Funds available and authorized/non-appropriation.** The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Purchasing Entity's receiving funding, appropriations, limitations, allotments, or other expenditure



authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Purchase Order issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Purchase Order from any part of Oregon state government other than Purchasing Entity. Nothing in this Addendum or Purchase Order is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Purchase Order issued under this Addendum.

7. **Control of Defense and Settlement.** Contractor's obligation to indemnify Purchasing Entity as set forth in Sections 14 of the Master Agreement is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Sections 14.1, 14.2 or 14.3; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Purchasing Entity of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, which shall not be unreasonably conditioned, delayed or withheld. Contractor shall not settle any claim on behalf of the State of Oregon without the approval of the Attorney General, which shall not be unreasonably conditioned, delayed or withheld. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
8. **Dispute Resolution.** Notwithstanding the provisions of Section 15 of the Master Agreement, any dispute between the parties under this Addendum or a CUA that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes. Neither party waives its right to a jury trial or right to participate in class, collective, or representative claims.
9. **Term and Termination of Participating Addendum.**
  - 9.1 **Term.** As set forth in the Addendum, the parties intend that this Addendum be coterminous with the Master Agreement. This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.
  - 9.2 **Termination.** DAS may terminate this Addendum, in whole or in part, at any time upon sixty (60) days prior notice to Contractor. In addition, DAS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS may establish in such notice, for any reason, or upon the occurrence of any

of the following events:

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

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

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

**9.3** Termination under any provision of this Addendum does not extinguish or prejudice the State's or a Purchasing Entity's right to enforce this Addendum or CUA with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Purchasing Entity to indemnification by Contractor. If this Addendum or CUA is so terminated, the State or a Purchasing Entity will pay Contractor in accordance with the terms of this Addendum for products and services provided by the Contractor to the Purchasing Entity.

**10. Suspension (Stop Work); Termination of Individual CUAs.**

**10.1** Stop Work. A Purchasing Entity may, at any time, by written notice to Contractor, require Contractor to stop providing the Services or to stop all or any part of the work required by A CUA for a period of up to ninety (90) Calendar Days after the date of the notice, or for any further period to which the parties may agree. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order and Purchasing Entity will remain liable for all Obligations incurred, even if such Obligations are incurred after the Stop Work Order is issued. Within a period of ninety (90) Calendar Days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Purchasing Entity will either (1) Cancel or modify the Stop Work Order by a supplementary written notice; or (2) Terminate the CUA.

If the Stop Work Order is canceled or Purchasing Entity issues a notice directing Contractor to resume Services, Purchasing Entity may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete the Services by a duly executed amendment, inclusive of any ramp-up time required to for Contractor to resume Services.

**10.2** Individual CUAs may be terminated at any time by written consent of Purchasing Entity and Contractor or Purchasing Entity may, at its sole discretion, terminate individual CUA, in whole or in part, upon sixty (60) days written notice to Contractor.

**10.3** Purchasing Entity may terminate individual CUAs, in whole or in part, immediately upon notice to Contractor, or at such later date as Purchasing Entity may establish in such notice, upon the occurrence of any of the following events:

**10.3.1** Purchasing Entity fails to receive funding, or appropriations, limitations or

other expenditure authority at levels sufficient to pay for the products or services to be acquired under the CUA; or

**10.3.2** Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of products or services under the CUA is prohibited or Purchasing Entity is prohibited from paying for such goods from the planned funding source; or

**10.3.3** Contractor has undisclosed liquidated and delinquent debt owed to the State of Oregon or any agency, board, commission, department or division of the State; or

**10.3.4** Contractor commits any material breach of this Addendum or a CUA.

**10.4** Upon receipt of written notice of termination, Contractor will stop performance under the CUA as directed by Purchasing Entity.

**10.5** Termination of a CUA does not extinguish or prejudice Purchasing Entity's right to enforce the CUA with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of Purchasing Entity to indemnification by Contractor. In addition, termination of a CUA does not extinguish or prejudice Purchasing Entity's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a CUA is terminated, Purchasing Entity will pay Contractor in accordance with the terms of this Addendum for products and services provided by Contractor to the Purchasing Entity.

**10.6** Upon termination of the Addendum or any CUA (including by expiration), in addition to providing the transition services under Section 4.1(l) of the Master Agreement, Contractor shall, at Purchasing Entity's discretion, either return all Purchasing Entity Data to Purchasing Entity (or delegate) in an agreed-upon format, or ensure Purchasing Entity has access and the ability to retrieve Purchasing Entity's Data for the term of the transition or 90 calendar day following termination, whichever is greater. This period will be at no additional charge to Purchasing Entity. Contractor shall not retain any copies of Purchasing Entity Data following Purchasing Entity's written verification that Purchasing Entity no longer requires post-termination access, except as necessary for audit verification purposes and for archival purposes in accordance with applicable law, rule or regulation.

## **11. Compliance with Law.**

**11.1 General.** Contractor shall comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Addendum or any CUA, and an Purchasing Entity's performance under a CUA is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230. and 279B.270.

**11.2 Federal Law.** Without limiting the generality of Section 11.1 above, Contractor shall comply with the additional federal terms and conditions attached hereto as Exhibit No. 3.

**11.3 Pay Equity.** In addition to the provisions of Section 4.4 of the Master Agreement,

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

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

12. **Application of Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to Purchasing Entity under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.311 – 192.478, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Purchasing Entity may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Purchasing Entity's release of documents to Entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense.
13. **Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Addendum or any CUA, 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)).
14. **Notices.** In addition to the provisions for notice via personal delivery or mail, any formal communications between the parties to or notices to be given under this Addendum or a CUA may be given by electronic mail at the address or number set forth on the Addendum or CUA. Any communication delivered by electronic mail will be deemed to be given when a confirming report for the transmission is generated by the transmitting machine. To be effective against the receiving party, such transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Addendum or CUA.

As between Contractor and State with respect to this Addendum, the Primary Contacts of Contractor and State are set forth above.

15. **Governing Law.** Notwithstanding the provisions in the CUA for corporate entities and the CUA for individuals, the laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Addendum and any CUA, including, without limitation, their validity, interpretation, construction, performance, and enforcement.
16. **Jurisdiction and Venue.** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a CUA under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A CUA SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or the consent to jurisdiction in State or Federal Court.

Any Claims between Contractor and an Purchasing Entity other than the State of Oregon or State agency that arise from or are related to individual CUAs or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Purchasing Entity resides or has its principal office, or at Purchasing Entity's option, within such other county as Purchasing Entity will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

17. **Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Addendum or any Purchase Order. A Purchasing Entity may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.
18. **Insurance.** Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2. No CUA may be placed or accepted until proof is provided that these requirements have been met.
19. **Purchasing Entity Data and Purchasing Entity Intellectual Property.** Purchasing Entity owns all Purchasing Entity Data and Purchasing Entity Intellectual Property. Purchasing Entity grants Contractor the right to use Purchasing Entity Data and Purchasing Entity Intellectual Property solely for the purposes of performing the Services and providing the Products under this Addendum and a CUA.
20. **Confidential Information.** In addition to the provisions of Section 9.6 of the Master

Agreement or any other provisions in the Master Agreement, Contractor acknowledges that it and its employees, agents, or subcontractors may, in the course of providing and performing the Services under this 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 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 are not de-identified) that result from the use of Purchasing Entity Data (collectively, "Confidential Information").

**20.1 Excluded from Confidential Information.** Confidential Information does not 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 Addendum; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this 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.

**20.2 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 other third-parties that may capture such Confidential Information during normal provision of the Services), or use Confidential Information for any purposes whatsoever other than the provision of Services or Products 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 promptly 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 Addendum, and Contractor will, to the extent applicable, cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity against any such person. Contractor shall not at any time during or after the term of this Addendum or CUA, except as directed by Purchasing Entity disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this this Addendum, and that upon termination of this 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 Addendum, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

**20.3 Identity Theft.** In the performance of this Addendum or CUA, Contractor may

have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(12). 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 Information Protection Act, ORS 646A.600-646A.628.

In addition to and without limiting the generality of Sections 19 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 by this Addendum or applicable CUA, in writing by Purchasing Entity, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

**20.4** 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 Addendum.

**20.5** Contractor shall require its employees, agents, and subcontractors to comply with this Section 20 or with provisions substantially similar to this Section 20.

**20.6 Prohibition on Data Mining.** Contractor shall not capture, maintain, scan, index, share or use Purchasing Entity Data stored or transmitted by or through the use of the Products or Services, 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 Products or Services, 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 Addendum.

- 21. Security Requirements/Non-Disclosure Agreement/Criminal Background Checks.** Upon request by any Purchasing Entity, Contractor and its employees, agents, and subcontractors performing services under this Addendum or CUA shall comply with the security and confidentiality requirements set forth in this Section 19.8 below:

**21.1.1 Security Requirements.** As set forth in Section 7 of Exhibit G to the Master Agreement, Contractor shall comply at all times with Purchasing Entity's network and facilities access policies and procedures, copies of which will be delivered to Contractor. In addition, Contractor shall comply with Payment Card Industry security

and other rules regarding the processing of debit and credit cards as set forth in Exhibit G of the Master Agreement.

**21.1.2 Criminal Background Check.** Contractor conducts a background check on all its employees in accordance with Section 19 of the Federal Deposit Insurance Act and all other applicable state and local regulations prior to hiring any such employee, and, upon request, Contractor may provide certification of such background checks.

22. **Injunctive Relief.** Contractor acknowledges that breach of this Section 20 including disclosure of any Confidential Information, may 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.
23. **Publicity.** Each party agrees that it will not disclose the form, content, or existence of this Addendum or CUA 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, the State of Oregon, or the Contractor 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.



## EXHIBIT NO. 2

### INSURANCE

Contractor shall maintain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall maintain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS. The Commercial General Liability and Automobile Liability Coverage shall be primary and non-contributory with any Commercial General Liability and Automobile Liability insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

Purchasing Entity may request additional insurance coverage, as necessary.

#### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY.**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

#### **COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$3,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$4,000,000.00.

#### **AUTOMOBILE LIABILITY INSURANCE.**

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$3,000,000.00 for bodily injury and property damage.

#### **BANKERS PROFESSIONAL LIABILITY:**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the

Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$8,000,000 per claim. Annual aggregate limit shall not be less than \$8,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:**

Contractor shall maintain network security and privacy liability insurance for the duration of the contract and for the period of time in which Contractor (or its Business Associates or subcontractor(s)) maintains, possesses, stores or has access to agency or client data, whichever is longer, with a combined single limit of no less than \$5,000,000 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of agency or client data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data and Protected Health Information ("PHI")) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of agency data.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED.**

The Commercial General Liability and Automobile Liability insurance under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

**WAIVER OF SUBROGATION:** In regard to the Commercial General Liability and Automobile Liability, Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

**TAIL COVERAGE.** If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's

completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, (iii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE.** Contractor shall provide to DAS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Addendum. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured,

**NOTICE OF CHANGE OR CANCELLATION.** Contractor or its insurer must provide at least 30 days' written notice to DAS before cancellation or non-renewal of the required Commercial General Liability, Automobile Liability and Workers Compensation insurance coverage(s).

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

**STATE ACCEPTANCE:** All insurance providers are shall maintain a minimum of a A- VII rating from the most recent issuance of the A.M. Best Ratings guide.

## EXHIBIT NO. 3

### FEDERAL TERMS AND CONDITIONS

Without limiting the generality of Section 10.1 of the Addendum, Contractor shall comply with all federal law, regulations and executive orders, as indicated, and shall cause all subcontractors to comply with all federal law, regulations and executive orders including the following. For purposes of this Addendum, all references to federal laws are references to federal laws as they may be amended from time to time.

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

During the performance of the Addendum, Contractor agrees as follows:

1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

1.3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

- 1.4. Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 1.5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 1.6. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 1.7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Addendum or with any of the said rules, regulations, or orders, this Addendum may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 1.8. Contractor will include the portion of the sentence immediately preceding subsection 1.1 and the provisions of subsection 1.1 through subsection 1.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

## **2. Davis-Bacon Act.**

- 2.1. All transactions regarding this Addendum will be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt.5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2.2. Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 2.3. Additionally, Contractor shall pay wages not less than once a week.

## **3. Copeland "Anti-Kickback" Act.**

- 3.1. Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145, and the requirements of 29 C.F.R. pt.3 as may be applicable, which are incorporated by reference into this Addendum.
- 3.2. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Federal Emergency Management Agency (FEMA) may be appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontract with all of these contract clauses.
- 3.3. A breach of the contract clauses above may be grounds for termination of the Addendum and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12.

#### **4. Contract Work Hours and Safety Standards Act.**

- 4.1. Overtime requirements. No contractor or subcontractor contracting for any part of the Addendum work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rates of pay for all hours worked in excess of forty hours in such workweek.
- 4.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subsection 4.1, Contractor or subcontractor responsible therefor shall be liable for the unpaid wages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subsection 4.1, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by subsection 4.1.
- 4.3. Withholding for unpaid wages and liquidated damages. The Purchasing Entity shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under the Addendum or any other Federal contract with Contractor or subcontractor or any other federally-assisted contract subject to the same Contract Work Hours and Safety Standards Act, which is held by Contractor or subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in subsection 4.2.
- 4.4. Subcontracts. Contractor or subcontractor shall insert in any subcontract the clauses set forth in subsections 4.1 through 4.4 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor with these provisions.

**5. Clean Air Regulations.** Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. §7401 et. seq.). The Act provides, in part:

- 5.1. No agency may enter into any contract with any person who is convicted of any offense under the Act for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction

occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under the Act, the condition giving rise to the conviction also shall be considered to include any substantive violation of the Act associated with the violation of the Act.

- 5.2. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
- 5.3. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- 5.4. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- 5.5. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]
- 5.6. Contractor shall report each violation to Purchasing Entity and understands that Purchasing Entity will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
- 5.7. Contractor shall include these provisions in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**6. Clean Water Regulations.** Contractor shall comply with all applicable standards, orders, or requirements issued under the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387).

- 6.1. No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.
- 6.2. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:
  - 6.2.1. Requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and

- 6.2.2.** Setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- 6.3.** The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- 6.4.** The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.
- 6.4.1.** No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.
- 6.4.2.** In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).
- 6.5.** Contractor shall report each violation to Purchasing Entity and understands that Purchasing Entity will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
- 6.6.** Contractor shall include these provisions in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- 7. Solid Waste Disposal Act.** Contractor shall comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act.
- 8. EPA Regulations.** Contractor shall comply with all applicable standards, orders, or requirements under Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the State, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.
- 9. Resource Conservation and Recovery.** Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.
- 10. Recycled Materials.** In the performance of the Addendum, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Addendum performance schedule, (ii) meeting Addendum performance requirements, or (iii) at a reasonable price.



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

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

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

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

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

drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, Contractor acknowledges the following:

- 13.1.** The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
- 13.2.** Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- 13.3.** Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- 13.4.** Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy of the State of Oregon that abuse of this drug will also not be tolerated in the workplace.

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

**14. Funding Agreements.** If Contractor is a small business firm or nonprofit organization and the Addendum provides for the performance of experimental, developmental or research work funded in whole or in part by the Federal government, Purchasing Entity shall comply with the provisions of 37 C.F.R. pt. 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements) and any implementing regulations issued by FEMA. See 2 C.F.R. pt. 200, Appendix II ¶F.

**15. Access to Records; Audits.** Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations." Upon reasonable prior, written notice, Contractor shall provide the State of Oregon, Purchasing Entity, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives reasonable access to any books, documents, papers, and records of Contractor which are directly pertinent to this Addendum for the purpose of making audits, examinations, excerpts and transcripts. Contractor shall permit the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor and Purchasing Entity acknowledge and agree that no language in this Addendum is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**16. Debarment and Suspension.** Contractor shall comply and shall cause its subcontractors to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, Contractor principles as defined in 2 C.F.R. §180.995 or its affiliates, as defined in 2 C.F.R. §180.905.). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549 (excluded as defined in 2 C.F.R. §180.940 or disqualified as defined in 2 C.F.R. §180.935).

Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor certifies:

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

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

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

**19. Educational Records.** Contractor shall comply with the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et. seq) and the implementing regulations at 6 CFR Part 17 and 44 CFR Part 19.

**20. Whistleblower Protection Act.** Contractor shall comply with the requirements for whistleblower protections (if applicable) at 10 U.S.C. Section 2409, 10 U.S.C. Section 4712, 10 U.S.C. 2324, 41 U.S.C. Sections 4304 and 4310.

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

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

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

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

**25. Buy American and Hire American.** Contractor shall comply with any applicable provisions of the Buy American Act (41 U.S.C. section 83-1 through 8305 and any other applicable statutes, regulations or rules that require, or provide a preference for, the purchase or acquisition of goods, products, or material produced in the United States.

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

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

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