

PARTICIPATING ADDENDUM FOR THE STATE OF OREGON

**MASTER SERVICE AGREEMENT FOR PUBLIC SAFETY
COMMUNICATIONS EQUIPMENT AND INCIDENTAL SERVICES**

**between the State of Washington on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance
And Ceragon Networks, Inc.**

On April 9, 2014, the State of Washington issued Solicitation #06913 on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance ("NASPO/WSCA") and its member states and other purchasing entities seeking offers from qualified and responsible proposers to provide Public Safety Communications Equipment and incidental Services. Ceragon Networks, Inc. ("Contractor") submitted a Proposal and was awarded a contract. The Master Service Agreement consists of the terms and conditions, Radio Category: Microwave Antennas

The State of Oregon ("State" or "Oregon") is a member of NASPO/WSCA. The State, by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), on behalf of the State of Oregon and its agencies and ORCPP members, has elected to participate in this procurement, 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").

1. Scope; Order of Precedence: This Addendum establishes an agreement to agree between Contractor and State pursuant to ORS 279B.140. All goods and services offered under the Master Services Agreement may be procured under this Addendum. This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers. In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Services Agreement, the following order of precedence applies:

- (a) this Addendum, less its exhibits;
- (b) Exhibit No. 1 of the Addendum (State Specific Terms and Conditions);
- (c) Exhibit No. 2 of the Addendum (Federal Law Provisions);
- (d) Exhibit No. 3 of the Addendum (Insurance);
- (d) any Purchase Order issued by an Authorized Purchaser pursuant to this Addendum; and
- (e) the Master Services Agreement, including its attachments.

2. Participation: Use of specific NASPO/WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Services Agreement: The State Specific Terms and Conditions set forth in Exhibit No.1 are hereby incorporated in and made a part of this Addendum.

4. Lease Agreements: Lease Agreements are NOT authorized by this Addendum.

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

Lead State
Name: Neva Peckham

Address:

Telephone: 360-407-9411

Fax:

E-mail: neva.peckham@des.wa.gov

Contractor

Name: Ceragon Networks Inc.

Depak Raghavan

Address: Overlook at Great Notch, 150 Clove Road, 9th Floor, Little Falls, NJ 07424

Telephone: (925) 336-4164

Fax; (201) 845-5665

E-mail: deepakr@ceragon.com

Participating State (Entity): State of Oregon

Name: Tim Jenks

Address: 1225 Ferry Street SE U140
Salem, Oregon 97301-4285

Telephone: 503-378-4778

Fax: 503-373-1626

E-mail: tim.jenks@state.or.us

6. Subcontractors: The following servicing subcontractors are permitted to provide Goods or Services under this Addendum:

7. Master Services Agreement Number: All purchase orders issued by Authorized Purchasers within the jurisdiction of this Addendum shall include the Participating State contract number: 5678 and the Lead State Master Services Agreement number: #06913.

This Addendum and the Master Services Agreement number #06913 (administered by the State of Washington), together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter and of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Services Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Services Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Services Agreement and its exhibits prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

8. Vendor Collected Administrative Fee: (if applicable) 1.0 %.

9. Tax Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown in the Participating Addendum is Contractor's correct taxpayer identification; (b) 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; and (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon Tax Laws. (For purposes hereof, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.)

IN WITNESS WHEREOF, the parties have signed this Addendum.



Participating State/Entity: The State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services	Contractor:
By: 	By: 
Name: Kelly R. Mix	Name: Chuck Meyo
Title: Procurement Manager	Title: President, North America
Date: 12-16-15	Date:
	Contractor Federal Tax ID#: 22-3642164

EXHIBIT NO. 1

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

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

“Authorized Purchaser” means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor.

“Contract” means the agreement between Authorized Purchaser and Contractor formed by the Authorized Purchaser’s issuance of a Purchase Order that incorporates by reference the terms and conditions of the Master Services Agreement and this Addendum.

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

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

“Master Services Agreement” means the State of Washington Master Services Agreement #06913 between Contractor and the State of Washington, on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the goods and services described therein.

“Purchase Order” means the purchase order document submitted to Contractor by an Authorized Purchaser that incorporates this Addendum by reference and specifies the quantity and type of goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Services Agreement and this Addendum.

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

2. Purchase Orders.

2.1 Purchase Orders. Authorized Purchasers may use their own forms for Purchase Orders. State agencies may also use the general State-approved Purchase Order referencing the Master Services Agreement Number. To the extent that the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary terms. 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 WASHINGTON MASTER SERVICES AGREEMENT/CONTRACT NO. #06913 THE TERMS AND CONDITIONS OF THE MASTER SERVICES AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO. 5678 APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

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

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

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

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

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

5.1 Volume Sales Reports (VSRs):

5.1.1 Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) calendar days from the end of each calendar quarter, which contains:

Complete and accurate details of all receipts (sales and refunds) for the reported period;
The information as identified in the DAS PS document titled Volume Sales Report Template - Data Requirement, Format and Layout; and Such other information as DAS PS may reasonably request.

Contractor shall send a VSR to DAS PS each quarter, 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."

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

5.1.3 Receipt/Acceptance: The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to vcaf.reporting@state.or.us. A separate section follows describing the administrative charge if it is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Price Agreement shall not preclude DAS PS from challenging the validity thereof at any time.

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

5.2 Vendor Collected Administrative Fee (VCAF):

5.2.1 Vendor Collected Administrative Fee (VCAF) PERCENTAGE:

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

5.2.2 VCAF Amount / Payment Due Date: During the term of this Price Agreement and for the sales during the last calendar quarter of the term of this Price Agreement, the Contractor shall remit VCAF payment to DAS PS within forty-five (45) calendar days after the end of each calendar quarter.

5.2.3 Contractor's price list or catalog shall reflect all Contractor's charges to Authorized Purchasers, provided, however, Contractor may not reflect the VCAF fee as a separate line item charge to Authorized Purchasers in Contractor's price list, catalog or invoice. For the purposes of this Price Agreement, quarters end March 31, June 30, September 30, and December 31. DAS PS 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 entity that actually reports or makes VCAF payment to DAS PS.

5.2.3.1 Payment Format: The fee shall be in the form of a check remitted to:

State of Oregon
Department of Administrative Services
Attn: State Procurement Office
1225 Ferry Street SE, U140
Salem, Oregon 97301-4285

Any other form of payment must be specifically approved by the Contract Administrator.

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

5.3 Audit: DAS PS, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records, as defined herein, and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 2.11.2.7. At DAS PS'S request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by DAS PS.

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

6. Warranties. Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Services Agreement and this Addendum for any purchases made by such Authorized Purchasers pursuant

to Purchase Orders. Without limiting the generality of the warranty provisions of the Master Services Agreement, Contractor represents and warrants to Authorized Purchaser that:

- a. Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- b. Goods or Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the RFP, Contractor further warrants that all Goods or Products conform to the specifications and meet or exceed all quality and safety standards set in the RFP;
- c. 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;
- d. Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Products, if any at time of delivery at no charge, and
- e. all Goods or Products, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods or Products, and that no other person has any right, title or interest in the Goods or Products which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

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

7. Indemnities.

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

7.2 Infringement Indemnity. Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, 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 cognizable intellectual property right of any third party (an "Infringement Claim").

7.3 Participation. Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 7.1 and 7.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser 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 7.1 or Section 7.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event 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.

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

8. Term and Termination of Participating Addendum.

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

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

- a. 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
- b. 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.

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

9. Termination of Individual Purchase Orders.

9.1 Individual Purchase Orders may be terminated at any time by written consent of Authorized Purchaser and Contractor or Authorized Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, upon 30 days written notice to Contractor.

9.2 Authorized Purchaser may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

- a. Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- b. Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or Authorized Purchaser is prohibited from paying for such goods from the planned funding source; or
- c. Contractor commits any material breach of this Addendum or a Purchase Order

9.3 Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Authorized Purchaser.

9.4 Termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the Purchase Order 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 Authorized Purchaser to indemnification by Contractor. In addition, termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Purchase Order is so terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by Authorized Purchaser.

10. Compliance with Applicable Law. Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Contract, and an Authorized Purchaser's performance under a 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 good and services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. 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.

In addition, Contractor shall comply with the additional federal law provisions set forth on Exhibit 2.

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

12. 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)(i)).

13. Notices. Except as otherwise provided in a Purchase Order, any formal communications between the parties to or notices to be given under a Purchase Order will be given in writing by personal delivery of a facsimile transmission or the notice or mailing the notice, postage prepaid, at the address or number set forth on

the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile 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 facsimile transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Purchase Order. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

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

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

15. 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 Purchase Order 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 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 with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

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

16. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. An Authorized Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

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

18. Independent Contractor. Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used

in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

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

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

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

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

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

EXHIBIT NO. 2 - Federal Law Provisions

Without limiting the generality of Section 10 of this Addendum, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. 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 any Contract entered into under 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).

(2) Clean Air, Clean Water, EPA Regulations. If this any Contract entered into under this Addendum, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), 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 Authorized Purchaser, 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.

(3) 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).

(4) Truth in Lobbying. The Contractor certifies, to the best of the Contractor's knowledge and belief that:

A. 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.

B. 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 any Contract entered into under this Addendum or other 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.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Addendum and any Contract entered into pursuant to this Addendum was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(5) HIPAA Compliance. If the work performed under any Contract entered into under this Addendum is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, work performed under the Contract is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

A. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and Authorized Purchaser for purposes directly related to the provision of services to clients which are funded in whole or in part under the Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Privacy Rules, set forth at OAR 407-014-0000 et. seq., or the Notice of Privacy Practices, if done by Authorized Purchaser. A copy of the most recent Notice of Privacy Practices is posted on the Oregon Health Authority's web site at <http://www.oregon.gov/OHA>, or may be obtained from the Oregon Health Authority.

B. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with Authorized Purchaser in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with Authorized Purchaser and shall comply with the Department of Human Services EDI Rules.

C. Consultation and Testing. If Contractor reasonably believes that the Contractor's or Authorized Purchaser's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the Authorized Purchaser's HIPAA officer. Contractor or Authorized Purchaser may initiate a request for testing of HIPAA transaction requirements, subject to available resources and Authorized Purchaser's testing schedule.

D. If Contractor is deemed to be a business associate of Authorized Purchaser under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164, Contractor hereby provides Authorized Purchaser with satisfactory assurances that if it receives from Authorized Purchaser or any trading partner any protected health information of any individual, it shall maintain the security and confidentiality of such information as

required by the HIPAA's Privacy Rule, and other applicable laws and regulations. Without limiting the foregoing, Contractor agrees that:

- a. Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by the Contract or as required by law;
- b. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by the Contract as required by law;
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Contract;
- d. Contractor will report to Authorized Purchaser any use or disclosure of PHI not provided for by the Contract of which Contractor becomes aware;
- e. Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;
- f. Contractor shall make available to Authorized Purchaser such information as it may require to fulfill its obligations to account for disclosures of such information;
- g. Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Authorized Purchaser or trading partner (or created or received by Contractor on behalf of Authorized Purchaser or trading partner) available to Authorized Purchaser and to the Secretary of the United States Department of Health and Human Services, for purposes of determining Authorized Purchaser's or trading partners' compliance with HIPAA; and
- h. If feasible, upon termination of the Contract, Contractor shall return or destroy all PHI received from Authorized Purchaser or trading partners (or created or received by Contractor on behalf of Authorized Purchaser or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Addendum and the Contract to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

Subject to the foregoing restrictions, Authorized Purchaser agrees that Contractor may use such PHI in the process of providing transaction mapping, trading partner profiling and training and mentoring services for Authorized Purchaser and trading partners under the Contract.

(6) 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.

(7) Substance Abuse Prevention and Treatment. 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).

(8) 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."

(9) Debarment and Suspension. Contractor 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 Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). 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. 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.

(10) Medicaid Compliance. To the extent Contractor performs any work whose costs are paid in whole or in part by Medicaid, Contractor shall comply with and cause its subcontractors to comply with the federal and State Medicaid statutes and regulations applicable to the work, including but not limited to:

- a. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to Authorized Purchaser, the Medicaid Fraud Control Unit of the Oregon Department of Justice and the Secretary of Health and Human Services;
- b. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;
- c. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and
- d. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

(11) ADA. 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.

(12) 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.).

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

EXHIBIT NO. 3 - INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS.

A. Required Coverages:

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall 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.

ii. **PROFESSIONAL LIABILITY**

Required by DAS PS Not required by DAS PS.

Professional Liability. Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Addendum. Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

- \$(DAS PS to enter amount) Per occurrence limit for any single claimant; and
- \$(DAS PS to enter amount) Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Addendum term to June 30, 2010:	\$1,500,000.
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).	

Per occurrence limit for multiple claimants:

From commencement of the Addendum term to June 30, 2010:	\$3,000,000.
July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).	

iii. **COMMERCIAL GENERAL LIABILITY.**

Required by DAS PS Not required by DAS PS.

Commercial General Liability. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

Bodily Injury/Death:

Per occurrence limit for any single claimant:

From commencement of the Addendum term to June 30, 2010:	\$1,500,000.
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).	

Per occurrence limit for multiple claimants:

From commencement of the Addendum term to June 30, 2010:	\$3,000,000.
July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).	

AND

Property Damage:

Per occurrence limit for any single claimant:

From commencement of the Addendum term to June 30, 2010: \$100,000.
From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Addendum term to June 30, 2010: \$500,000.
From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

Required by DAS PS **Not required by DAS PS.**

Automobile Liability. 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 for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

Bodily Injury/Death:

Per occurrence limit for any single claimant:

From commencement of the Addendum term to June 30, 2010: \$1,500,000.
July 1, 2010 to June 30, 2011: \$1,600,000.
July 1, 2011 to June 30, 2012: \$1,700,000.
July 1, 2012 to June 30, 2013: \$1,800,000.
July 1, 2013 to June 30, 2014: \$1,900,000.
July 1, 2014 to June 30, 2015: \$2,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Addendum term to June 30, 2010: \$3,000,000.
July 1, 2010 to June 30, 2011: \$3,200,000.
July 1, 2011 to June 30, 2012: \$3,400,000.
July 1, 2012 to June 30, 2013: \$3,600,000.
July 1, 2013 to June 30, 2014: \$3,800,000.
July 1, 2014 to June 30, 2015: \$4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

Per occurrence limit for any single claimant:

From commencement of the Addendum term to June 30, 2010: \$100,000.
From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Addendum term to June 1, 2010: \$500,000.
From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

v. POLLUTION LIABILITY.

Required by DAS PS **Not required by DAS PS.**

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Addendum. Combined single limit per occurrence shall not be less than \$ 1,000,000. Annual aggregate limit shall not be less than \$3,000,000

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

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Addendum, for a minimum of 24 months following the later of (i) Contractor's completion and DAS PS's acceptance of all Services required under this Addendum, or, (ii) The expiration of all warranty periods provided under this Addendum. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Addendum. Contractor shall provide to DAS PS, upon DAS PS's request, certification of the coverage required under this section C.

D. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to DAS PS. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Addendum and shall be grounds for immediate termination of this Addendum by DAS PS.

E. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to DAS PS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Addendum. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.