



Participating Addendum Number PO-10700-00042436
for
Products and Supplies for Correctional Facilities and Incarcerated Individuals
between
The Department of Administrative Services, Enterprise Goods and Services,
State Procurement Services ("DAS SPS")
and
Bob Barker Company, Inc.

For the following products:

- a. Clothing and Uniforms for Incarcerated/Institutionalized Persons**
- b. Undergarments for Incarcerated/Institutionalized Persons**
- c. Footwear for Incarcerated/Institutionalized Persons**
- d. Personal Hygiene & Personal Care Products**
- e. Mattresses & Linens**
- f. Facility – Evidence & Inmate Property Storage**
- g. Facility – Kitchen**
- h. Facility – Laundry Supplies & Equipment**
- i. Recreation Equipment (such as exercise equipment, sports equipment, etc.)**

This Participating Addendum is entered into by the Department of Administrative Services, Enterprise Goods and Services, State Procurement Services ("DAS SPS" or "Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 4400036123, executed by Contractor and South Carolina ("Lead State") for Products and Supplies for Correctional Facilities and Incarcerated Individuals ("Master Agreement"):

Bob Barker Company, Inc. ("Contractor")
7925 Purfoy Road
Fuquay Varina, NC 27526

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Sabrina Henner
Contract Specialist
sabrinahenner@bobbarker.com
1-800-334-9880

Participating Entity's contact for this Participating Addendum is:

Melissa Esser
State Procurement Analyst
Melissa.j.esser@das.oregon.gov
971-283-4439

- II. **TERM.** This Participating Addendum is effective as of the date of the last signature below, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. **PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state authorized to use statewide contracts in the State of Oregon ("Purchasing Entities"). Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. **GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. **SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. **Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
 - b. **Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
 - c. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

- VI. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum as set forth in Attachment A.
- VII. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Contractor shall submit volume sales reports and vendor-collected administrative fees in the amount of 1.5% of Contractor's gross total sales, less any credits or refunds, in accordance with the requirements set forth at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>.
- VIII. **FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- IX. **ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A: Oregon Specific Terms and Conditions
 - b. Attachment B: Insurance

- c. Attachment C: Contractor Data
- d. Attachment D: Purchase Order
- e. Attachment E: Federal Terms and Conditions

X. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Sabrina Henner
Contract Specialist
sabrinahenner@bobbarker.com
1-800-334-9880

For Participating Entity:

Melissa Esser
State Procurement Analyst
Melissa.j.esser@das.oregon.gov
971-283-4439

XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR: Bob Barker Company, Inc.

**PARTICIPATING ENTITY: The Department of
Administrative Services, Enterprise Goods and
Services, State Procurement Services**



Signature

SABRINA HENNER

Printed Name

CONTRACT SPECIALIST

Title

3/27/2025

Date

Brent Lutz

Digitally signed by Brent Lutz
Date: 2025.04.03 17:32:44 -07'00'
Adobe Acrobat version: 2025.001.20432

Signature

Brent Lutz

Printed Name

**Procurement Services
Manager**

Title

4/3/25

Date

LEGAL APPROVAL: Pursuant to ORS 291.047, this Addendum was reviewed and approved by Oregon Department of Justice Sr. Assistant Attorney General, Stephanie A. Schor, via email dated January 23, 2025.

Attachment A

Oregon Specific Terms and Conditions

Applicability. This Addendum pertains to the NASPO Products and Supplies for Correctional Facilities (“Products and Services”), including related intellectual property (such as documentation) to be provided by Contractor to Purchasing Entities under Contracts entered into under this Addendum.

1. Definitions.

The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits. A Contract entered into between Purchasing Entity and Contractor may also include additional defined terms.

“Contract” means the fully executed written agreement formed between Contractor and Purchasing Entity with authority to enter into an agreement under this Addendum, including a Purchase Order, the terms and conditions of this Addendum, terms required by the Master Agreement, additional terms required by the Purchasing Entity, and all its exhibits and attachments.

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

“ORCPP” means the “Oregon Cooperative Purchasing Program”. State agencies with their own procurement authority, institutions of higher institution, political subdivisions and other entities may become members of the ORCPP and then are authorized to use statewide contracts in the State of Oregon.

“Master Agreement” means the Master Agreement #4400036123 between Contractor and the State of South Carolina, on behalf of the member states of the National Association of State Procurement Officials NASPO ValuePoint Purchasing Group, and its attachments, as may be amended from time to time. The Master Agreement together with this Addendum sets forth terms, conditions and requirements for purchase by Purchasing Entities of the Products and Services described in the Master Agreement.

“Purchasing Entity” means an executive department agency of the State of Oregon with authority, or with advance written authorization from a State Agency with authority, that enters into a Contract with Contractor, or an ORCPP member that enters into a Contract with Contractor.

“Purchase Order” means a purchase document submitted to Contractor by a Purchasing Entity that is part of the Contract and specifies the quantity and type of Products and/or Services that Contractor will provide to the Purchasing Entity under the Contract.

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

2. Purchase Orders.

2.1 Form of Purchase Orders. Purchasing Entities may use their own forms for Purchase Orders. State Agencies may use the Purchase Order substantially in the form attached to this Addendum as Attachment D. To the extent the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary terms. Each Purchase Order must contain, on the front page, the following language:

THIS PURCHASE IS PLACED AGAINST THE STATE OF SOUTH CAROLINA MASTER AGREEMENT NO. 4400036123 AND STATE OF OREGON PARTICIPATING ADDENDUM NO. PO-10700-00042436. THE TERMS AND CONDITIONS

OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

2.2 DAS Purchasing Threshold. Purchasing Entities that are agencies of the State of Oregon under DAS procurement authority may issue ordering instruments 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.

2.3 No Third-Party Beneficiaries. DAS SPS and Contractor are the only parties to this Addendum and are the only parties entitled to enforce its terms. Purchasing Entities are intended beneficiaries of this Addendum.

The Purchasing Entity and Contractor are the only parties to a Contract, unless the Contract specifically states otherwise, and are the only parties entitled to enforce a Contract's terms.

Contractor shall 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 Goods and/or Services and the resulting contractual relationship, if any, with each such contracting party. The State bears no liability for and expressly disclaims any liability for purchases made by State Agencies without the authority or authorization described in this Addendum, non-State Agency Purchasing Entities, or any other entity.

3. Payment Provisions. Purchasing Entity's obligation to make payment under this Addendum, if any, and the obligation to pay late charges is subject to ORS 293.462.

4. Funds Available and Authorized/Non-Appropriation. The State of Oregon's and its agencies' payment obligations under Contracts entered into under this Addendum are conditioned upon Purchasing Entity 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 Contract entered into 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 Purchasing Entity. Nothing in this Addendum or any Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract entered into under this Addendum.

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

5. Indemnification.

5.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon, DAS SPS, Purchasing Entity and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever, including personal injury, death, damage to real property and damage to tangible or

intangible personal property resulting from, arising out of, or relating to the Products, Purchasing Entity's use of the Products, or the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Addendum or a Contract, including: (i) any claim that Contractor, a subcontractor, or Contractor's staff or a subcontractor's staff are employees of the State or Purchasing Entity for any reason, and (ii) any claim against the State or Purchasing Entity, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this Addendum or a Contract. Without limiting the generality of the foregoing, Contractor will have no obligation to indemnify DAS SPS, Purchasing Entity or the State of Oregon from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of DAS SPS, Purchasing Entity or the State of Oregon, and their officers, employees or agents.

5.2 Infringement Indemnity. In addition to and without limiting the generality of this section, Contractor expressly agrees to indemnify, defend and hold the State of Oregon, Purchasing Entity and their agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Services or Products or use thereof infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the Products infringe a third party's Intellectual Property Rights, Contractor may upon receipt of DAS SPS' or Purchasing Entity's prior written consent, which DAS SPS and Purchasing Entity will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Purchasing Entity the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Service or Product continues to function in material conformance with the specifications set forth in this Addendum or a Contract. Contractor's failure or inability to accomplish any of the foregoing will be deemed a material breach of this Addendum or Contract, and DAS SPS or Purchasing Entity may pursue any rights and remedies available to it under this Contract, including termination. Contractor will not be liable under this section for any claim for infringement based solely on the following:

5.2.1 Purchasing Entity's modification of the Service or Product other than as contemplated by this Addendum or a Contract, the specifications, or as otherwise authorized by Contractor in writing;

5.2.2 Use of the Service or Product in a manner other than as contemplated in this Addendum or a Contract, the specifications, or as otherwise authorized by Contractor in writing; or

5.2.3 Use of the Service or Product in combination, operation, or use of with other products other than as contemplated by this Addendum or a Contract, the specifications, or as otherwise authorized by Contractor in writing.

5.3 Control of Defense and Settlement. Contractor's obligation to indemnify DAS SPS and Purchasing Entity as set forth in this Addendum 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 this section; however, neither Contractor nor any attorney engaged by Contractor may 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, 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.

6. Term and Termination of Addendum.

- 6.1 Term.** Subject to DAS SPS' right to terminate this Addendum, it is the intent of the parties that this Addendum be co-terminus with the Master Agreement. In the event the Lead State extends the term of the Master Agreement, the term of this Addendum will extend to such new expiration date without further action by DAS SPS. This Addendum remains in effect until the earlier of (i) the expiration or termination of the Master Agreement, or (ii) expiration or termination of this Addendum in accordance with its terms.
- 6.2 Termination for Convenience.** DAS SPS may terminate this Addendum, in whole or in part, at any time upon 30 calendar days' prior written notice to Contractor.
- 6.3 DAS SPS' Right to Terminate for Other Reasons.** DAS SPS may terminate this Addendum, in whole or in part, immediately upon written notice to Contractor, or at such later date as DAS SPS may establish in such notice, for any reason, or upon the occurrence of any of the following events:
- 6.3.1** State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Services to be purchased under the Addendum.
 - 6.3.2** Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Services under this Addendum is prohibited or the State is prohibited from paying for such Service from the planned funding source.
 - 6.3.3** Contractor has undisclosed liquidated and delinquent debt owed to the State of Oregon or any agency, board, commission, department or division of the State.
- 6.4 DAS SPS' Right to Terminate for Cause.** In addition to any other rights and remedies DAS SPS may have under this Addendum, DAS SPS may terminate this Addendum, in whole or in part, immediately upon written notice to Contractor of Contractor's material breach of this Addendum or under one or more Contracts.
- 6.5** Upon receipt of written notice of termination, Contractor will stop performance under Contracts if and as directed by State.
- 6.6** Termination under any provision of this Addendum does not extinguish or prejudice State's or a Purchasing Entity's right to enforce this Addendum or a Contract with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or a Purchasing Entity to indemnification by Contractor.

7. Term and Termination of Contracts.

- 7.1** Individual Contracts may be terminated at any time by written consent of Purchasing Entity and Contractor.
- 7.2** Purchasing Entity may, at its sole discretion, terminate a Contract, in whole or in part, upon 30 calendar days' written notice to Contractor.
- 7.3** Purchasing Entity may terminate a Contract, in whole or in part, immediately upon written 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:
- 7.3.1** Purchasing Entity fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Products and/or Services to be purchased under the Contract.

7.3.2 Federal or State laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Services under the Contract is prohibited, or Purchasing Entity is prohibited from paying for such Services from the planned funding source.

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

7.3.4 Contractor commits any material breach of this Addendum or the Contract and has failed to cure the breach within the time set forth in the Contract or notice.

7.4 Upon receipt of written notice of termination, Contractor will stop performance under the Contract as directed by Purchasing Entity.

7.5 Termination of a Contract does not extinguish or prejudice Purchasing Entity's right to enforce the Contract 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 Contract 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 or a Contract. If a Contract is so terminated, Purchasing Entity will pay Contractor in accordance with the terms of the Contract (including this Addendum) for Products or Services delivered and accepted by Purchasing Entity.

8. Compliance with Law.

8.1 Compliance with Law Generally. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor, this Addendum, and Contracts entered into under this Addendum. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Addendum and Contracts: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA); (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable and required by law to be so incorporated. DAS SPS' and Purchasing Entities' performance is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

8.2 Oregon False Claims Act. Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Addendum or a Contract, including the procurement process relating to this Addendum, which constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Addendum, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State of Oregon under this Contract or any other provision of law.

8.3 Changes in Law Affecting Performance. Each party will immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Addendum or a Contract. Each party shall monitor changes in federal and state laws, ordinances, and regulations applicable to its performance hereunder, and will be deemed aware of such changes within 30 calendar days of the enactment of any such change.

8.4 Pay Equity. As required by ORS 279B.235, Contractor shall comply with 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 SPS or Purchasing Entity to terminate this Addendum or a Contract for cause.

8.5 Non-Discrimination. Contractor certifies that it has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material condition, to maintain such policy and practice in force during the term of this Addendum and each Contract.

9. Oregon 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 DAS SPS or Purchasing Entity may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to DAS SPS' or 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.

10. Recycled Products. Contractor will use, to the maximum extent economically feasible in the performance of this Addendum or any Contract, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

11. Notices. Except as otherwise provided in a Contract (including for security incident and breach notifications), any formal communications between Purchasing Entity and Contractor, or notices to be given under a Contract will be given in writing by electronic transmission or the notice or mailing the notice, postage prepaid, at the physical or email address set forth in the Contract. Any communication so addressed and mailed will be deemed to have been received five calendar days after mailing. Any communication delivered electronically will be deemed to be given when sent, and to be effective against the receiving party, such electronic transmission must be confirmed by a reply email or telephone notice to the receiving party's authorized representative, as set forth in the Contract.

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

11. Governing Law. 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 resulting Contracts, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

12. Jurisdiction and Venue. Any claim, action, suit or proceeding (collectively, “Claim”) between the State of Oregon (including DAS SPS, Purchasing Entities who are State Agencies, OCRPP Purchasing Entities that are Oregon executive department agencies, and any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Addendum or a Contract 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 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 a Purchasing Entity other than the State of Oregon or a State Agency that arise from or are related to individual Contracts 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.

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

14. Insurance. No later than ten days following the Effective Date, Contractor must provide insurance as set forth on Attachment B, Insurance, of this Addendum. No Contracts may be placed or accepted until proof is provided that these requirements have been met. A Purchasing Entity may require additional amounts or types of insurance under a Contract.

15. Amendments. This Addendum may only be modified in writing agreed to and executed by the parties and approved in accordance with applicable law. A Contract may only be modified in writing agreed to and executed by the parties and approved in accordance with applicable law.

Attachment B

Insurance

Contractor shall obtain at Contractor's expense the insurance specified in this Attachment prior to performing under this Participating Addendum or Contract. Contractor shall maintain such insurance in full force and at its own expense throughout the duration of this Participating Addendum or Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DAS PS. All coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this Attachment, DAS PS requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

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.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

COMMERCIAL GENERAL LIABILITY:

Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Participating Addendum or Contract, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate limit.

AUTOMOBILE LIABILITY INSURANCE:

☒ **Required** ☐ **Not required**

Contractor shall provide Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and Excess/Umbrella Insurance may be used to meet the required limits of insurance. When used, all of the primary and umbrella or excess policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The umbrella or excess policies must be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, must be called upon to contribute to a loss until the Contractor’s primary and excess liability policies are exhausted.

If Excess/Umbrella Insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella Insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers’ Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), required under this Participating Addendum or Contract must include an Additional Insured endorsement specifying the State of Oregon, its officers, employees, and agents as Additional Insureds, but only with respect to Contractor’s goods to be delivered and Services to be performed under this Participating Addendum or Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, DAS PS requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor’s goods to be delivered and Services to be performed under this Participating Addendum or Contract. The Additional Insured endorsement with respect to liability arising out of Contractor’s ongoing operations must be on, or at least as broad as, ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on, or at least as broad as, ISO form CG 20 37.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the DAS PS or State of Oregon by virtue of the payment of any loss. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not DAS PS has received a Waiver of Subrogation endorsement from the Contractor or the Contractor’s insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims-made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Participating Addendum or Contract, for a minimum of 24 months following the later of:

- (i) Contractor’s completion and DAS PS’s acceptance of all goods and Services required under this Participating Addendum or Contract, or
- (ii) DAS PS’s or Contractor’s termination of this Participating Addendum or Contract, or
- (iii) The expiration of all warranty periods provided under this Participating Addendum or Contract.

CERTIFICATE(S) AND PROOF 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 Participating Addendum or Contract. The Certificate(s) of Insurance must list the State of Oregon, its officers, employees, and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) of Insurance must also include all required endorsements or

copies of the applicable policy language effecting coverage required by this Participating Addendum or Contract. If excess/umbrella Insurance is used to meet the minimum insurance requirement, the Certificate(s) of Insurance must include a list of all policies that fall under the Excess/Umbrella Insurance. As proof of insurance, DAS PS has the right to request copies of insurance policies and endorsements relating to the insurance requirements under this Attachment.

NOTICE OF CHANGE OR CANCELLATION:

Contractor or its insurer shall provide at least 30 calendar days' written notice to DAS PS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by DAS PS under this Participating Addendum or Contract and to provide updated requirements as mutually agreed upon by Contractor and DAS PS.

STATE ACCEPTANCE:

All insurance providers are subject to DAS PS acceptance. If requested by DAS PS, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to DAS PS's representatives responsible for verification of the insurance coverages required under this Attachment.

Attachment C
Contractor Data

Contractor Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS):

BOB BARKER COMPANY, INC.

Street address:

7925 PURFOY ROAD

City, state, zip code:

FUQUAY VARINA, NORTH CAROLINA 27526

Email address:

SABRINAHENNER@BOBBARKER.COM

Telephone:

(800) 334-9880

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): ☐ YES ☒ NO

Business Designation: (Check one box):

- | | | |
|--|--|--|
| ☐ Professional Corporation | ☐ Nonprofit Corporation | ☐ Limited Partnership |
| ☐ Limited Liability Company | ☐ Limited Liability Partnership | ☐ Sole Proprietorship |
| ☒ Corporation | ☐ Partnership | ☐ Other |

Attachment D

Purchase Order

		STATE OF OREGON			PURCHASE ORDER (PO) NO.	
Agency		PO Date	Delivery Date	Bid Number	Requisition No.	
Contractor Name/Phone/Address/Email			Bill To			
Contractor FEIN		MBPO/Contract Number		Agency Contact/Phone/Email		
Ship To						
Item	Description	Quantity	U/M	Unit Price	Extended Amt.	
Special Terms and Conditions: THIS PURCHASE IS PLACED AGAINST THE STATE OF SOUTH CAROLINA MASTER AGREEMENT NO. 4400036123 AND STATE OF OREGON PARTICIPATING ADDENDUM NO. PO-10700-00042436. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.				Sub Total		
				Freight		
				Total		
Authorized Agent:				Approved Date:		

Attachment E

Federal Terms and Conditions

Without limiting the generality of the Compliance with Law sections in the Master Agreement and the Participating 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, in each case to the extent directly applicable to contractor and/or its subcontractors pursuant to applicable law. For purposes of this Participating Addendum and all Contracts, all references to federal laws are references to federal laws as they may be amended from time to time.

1. Equal Employment Opportunity. If a Contract, 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 under this Participating Addendum and a Contract, 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 a Contract or with any of the said rules, regulations, or orders, this Addendum or a Contract 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 under this Participating Addendum regarding a Contract 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 Participating Addendum and a Contract.
- 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 Participating Addendum or Contract 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 contract 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 a Contract 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 Participating Addendum or a Contract, 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 this Participating Addendum or Contract performance schedule, (ii) meeting Participating Addendum and Contract 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 Participating Addendum and a Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this

Participating Addendum and a 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. 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. HIPAA Compliance. If the work performed under this Participating Addendum and a Contract 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 this Participating Addendum and a Contract is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

- 13.1. 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 the State for purposes directly related to the provision of services to clients which are funded in whole or in part under this Participating Addendum and a Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the State's Privacy Rules, OAR 407-014-0000 et. seq., or the State's Notice of Privacy Practices, if done by DAS SPS or Purchasing Entity. A copy of the most recent State Notice of Privacy Practices is posted on the State web site at: <http://www.oregon.gov/OHA> or may be obtained from DAS SPS or Purchasing Entity.
- 13.2. Data Transactions Systems.** If Contractor intends to exchange electronic data transactions with DAS SPS or Purchasing Entity 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 the State and shall comply with the State's EDI Rules.
- 13.3. Consultation and Testing.** If Contractor reasonably believes that the Contractor's or the State'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 State's HIPAA officer. Contractor or State may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the State's testing schedule.
- 13.4. If Contractor is deemed to be a business associate of State under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164,** Contractor hereby provides the State with satisfactory assurances that if it receives from the State 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:
 - 13.4.1. Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Participating Addendum or a Contract or as required by law;
 - 13.4.2. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Participating Addendum or a Contract;
 - 13.4.3. 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 Participating Addendum or Contract;
 - 13.4.4. Contractor will report to Purchasing Entity any use or disclosure of PHI not provided for by this Participating Addendum or a Contract of which Contractor becomes aware;
 - 13.4.5. 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;
 - 13.4.6. Contractor shall make available to Purchasing Entity such information as they may require to fulfill their obligations to account for disclosures of such information;
 - 13.4.7. 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 State or trading partner (or created or received by Contractor on behalf of the State or trading partner) available to the State and to the Secretary of the United States Department of Health and Human Services, for purposes of determining the State's or trading partners' compliance with HIPAA; and
 - 13.4.8. If feasible, upon termination of this Participating Addendum or a Contract, Contractor shall return or destroy all PHI received from the State or trading partners (or created or received by Contractor on behalf of the State 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

Participating Addendum and a 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, Purchasing Entity agrees that Contractor may use such PHI in the process of providing transaction mapping, trading partner profiling and training and mentoring services for Purchasing Entity and trading partners under this Participating Addendum and a Contract.

14. 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:

- 14.1.1. 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 DAS SPS or Purchasing Entity, the Medicaid Fraud Control Unit of the Oregon Department of Justice and the Secretary of Health and Human Services;
- 14.1.2. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;
- 14.1.3. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and
- 14.1.4. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.
- 14.1.5. 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.

15. 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:

- 15.1. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace.
- 15.2. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- 15.3. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- 15.4. 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.

16. Funding Agreements. If Contractor is a small business firm or nonprofit organization and this Participating Addendum or the Contract 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.

17. 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." 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' access to any books, documents, papers, and records of Contractor which are directly pertinent to this Participating Addendum or a Contract 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. If applicable, Contractor shall provide the FEMA Administrator or his authorized representatives' access to construction sites pertaining to the work being completed under this Participating Addendum or the Contract. Contractor and Purchasing Entity acknowledge and agree that no language in this Participating Addendum or a Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

18. 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:

- 18.1.** Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- 18.2.** Contractor has not within a three-year period preceding the Effective Date of this Participating Addendum and any Contract 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;
- 18.3.** 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
- 18.4.** Contractor has not within a three-year period preceding the Effective Date of this Participating Addendum and any Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

19. 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.

20. 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.).

21. Federal Tax Information. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.).

28. 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.

29. 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.

30. 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 Participating Addendum or a Contract.

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