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**Contract #**

**for**

**with**

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Effective:

The following documents comprise the executed contract effective:

- I. Vendor Contract and Signature Form
- II. Supplier's Response to the RFP, incorporated by reference



Contract # LS4680

# OMNIA MASTER AGREEMENT

1. CONTRACTING PARTIES: This contract is between the Division of Purchasing and the following Contractor:

|                                |           |              |  |
|--------------------------------|-----------|--------------|--|
| <u>Bob Barker Company, Inc</u> |           |              |  |
|                                | Name      |              |  |
| <u>Po Box 890885</u>           |           |              |  |
|                                | Address   |              |  |
| <u>Charlotte</u>               | <u>NC</u> | <u>28289</u> |  |
| City                           | State     | Zip          |  |

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
- Non-Profit Corporation
- For-Profit Corporation
- Partnership
- Government Agency

Contact Person Kat Smith Phone # 919-753-1656 Email kathrynsmith@bobbarker.com  
Vendor #19287B Commodity Code #00000

2. CONTRACT PORTFOLIO NAME: Online Marketplace

3. PROCUREMENT: This contract is entered into as a result of Solicitation #TR24-8.

4. CONTRACT PERIOD: Effective Date: 05/06/2025 Termination Date: 05/05/2030 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A.

5. Prompt Payment Discount (if any): N/A. Price Guarantee Period (if any): N/A.

6. Administrative Fee, as described in the Solicitation and Attachment A: Established by Omnia and the participating entities upon establishing a participating addendum.

7. ATTACHMENT A: State of Utah Standard Terms and Conditions for  Goods  Services, or  IT  
ATTACHMENT B: Scope of Work  
ATTACHMENT C: Pricing/Catalog  
**Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**

8. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
- b. Utah State Procurement Code, Procurement Rules, the Solicitation, and Contractor's response to the Solicitation.

9. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 4 above.

### CONTRACTOR

Contractor's Signature

KAT SMITH - CONTRACT SPECIALIST

Print Name

Title

09/26/2024

Date

### STATE

DocuSigned by:

9/26/2024

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Director, Division of Purchasing

Date

**ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES**

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
  - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor signed.
  - d) **"Contractor"** means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
  - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
  - f) **"Division"** means the Division of Purchasing and General Services.
  - g) **"Eligible User(s)"** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts, including agencies nationwide registered with OMNIA Partners, Public Sector are eligible to participate in any subsequent Contract.
  - h) **"End User Agreement"** means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
  - i) **"Procurement Item"** means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
  - j) **"Response"** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
  - k) **"Solicitation"** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
  - l) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - m) **"Subcontractors"** means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
  - n) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.

- a) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  - b) Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  - c) Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
  8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
  9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
  10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
  11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
  12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
  13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
  14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.
  15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.  
Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
  - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
  - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
  - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
  - d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**
  20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
  21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
  22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.
- If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming

Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
  1. Contractor has received payment for the Custom Deliverables,
  2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
  3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
  4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, nontransferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate

in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **RESERVED.**
36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.
40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ACTIONS:** In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

(Revision Date: 7/20/2023)

(Omnia Revised section: 1.g) Date: 4/23/2024)

## Attachment B - Scope of Work

### 1. Scope

The Contractor will provide OMNIA Partners Participating Public Agencies access to and use of an online digital marketplace to purchase of goods and services that may be used routinely and needed quickly to address the everyday needs of public entities, schools, and universities.

### 2. Participating Public Agencies

The Contractor will have the right to enter local “service” agreements with Participating Public Agencies accessing the contract through OMNIA Partners, so long as the effective date of such agreement is prior to the expiration of the contract. All local agreements may have a full potential term not to exceed five years. Although the scope reflects the needs and requirements of the State of Utah, OMNIA Partners Participating Public Agencies may have different requirements. Participants may elect to negotiate certain terms to conform to their purchasing and contracting requirements.

Utilization of the contract by OMNIA Partners Participating Public Agencies will be at the discretion of the individual Participating Public Agencies. Any modifications agreed to by Participating Public Agencies and Contractor are exclusively between the Participating Public Agencies and the Contractor.

### 3. Deliverables

Contractor will provide the following deliverables:

- 1) Access and use to a digital marketplace for users to order goods and services
- 2) Fulfill orders from beginning (ordering of products) to end (delivery to user)
- 3) Form of data analytics: Standard reporting; access to online order history
- 4) Ability to restrict certain items as designated by Participating Public Agencies as needed to meet their laws and applicable rules
- 5) Platform to connect one or more sellers to multiple buyers
- 6) An established and demonstrated methodology for showing prices are generally below retail prices
- 7) Ability to make payments through the platform or to a centralized accounts receivable function via credit card functionality
- 8) Online catalog featuring a wide variety of products
- 9) Quick delivery with the majority of products available to be delivered within five days
- 10) A central point of contact for customer service, delivery, or account issues that will be available by phone, e-mail, virtual chat during normal business hours (9am to 5pm MST) Monday through Friday. Representative will respond to inquiries within 24 business-hours.
- 11) Customizable workflow and governance capabilities in the platform to allow: all administrators to restrict product or commodities depending on organizational internal policies and procedures; full revision history of changes made and who made the workflow
- 12) Other platform capability: Secure login; mobile-enabled site; freight selection; online sample request form; product images (high resolution) associated with each item

#### 4. Product Offering – Categories

Contractor will provide products for a minimum of two categories. The items listed in each category are not restrictive or exhaustive but included to provide a general description of products and supplies that may be included. While all items described are available through the contract, Participating Public Agencies may choose to limit which categories their end users have access to. Contractors will offer their complete catalog of product and services

The Participating Public Agencies and Contractor may enter into a separate supplemental agreement or marketplace membership program to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, incentives and/or rebates, etc. Any supplemental agreement or marketplace membership program developed under this contract is exclusively between the Participating Public Agency and Contractor.

The categories are as follows:

##### 1) Education-Based Accessories, Display, Products and Related Supplies

Items related to products and supplies used in an education-based setting which may include but is not limited to: animal and pet supplies, art supplies, craft products, books, lesson plans and curriculum, school equipment, white boards, blackboards, teaching material, and other related products.

##### 2) Information Technology-Peripheral Devices and Related Products

Supplies and solutions that involve information technology peripheral devices which may include but is not limited to: mouse, copiers, printers, cameras, video cameras, microphones, speakers, keyboard, multifunction printers, scanners, plotters, and other related products. Items in this category should not connect to an end user's network.

##### 3) Maintenance, Repair and Operations Products (MRO)

Items related to the maintenance, repair, and/or general operations that include but is not limited to: building materials, hardware, cabinets, motors, pumps, paints and coatings, plumbing equipment, power tools, windows, doors, cleaning products (to include green and dye-free), carpet care products and supplies, restroom care products and supplies, waste receptacles and liners, industrial tools and supplies (such as carts, dusters, brushes, spray bottles, squeegees, and gloves), rags, wipes and other related supplies and products.

##### 4) Office-Based Accessories, Décor, Products, and Related Supplies

Items that could be utilized in an office-like setting and used on a semi-regular basis which may include but is not limited to: binders, folders, filing materials, storage, calendars, paper (copy, printer, photo and presentation), notebooks, labels, post-it notes, shipping materials, envelopes, staplers, staples, paper punches, paper clips, scissors, rubber bands, cash register and thermal rolls, ink, toner cartridges, pens, pencils, markers, framing, tabletop or floor lamps, mirrors, general signage, wall décor, display cases, area rugs, mats, and other related products.

5) Apparel

Items that could be utilized by juveniles or adults, which may include but is not limited to: innerwear, outerwear, shoes, uniforms, linens, and other related products.

6) Personal Care Items

Items related to personal care that include but are not limited to: personal hygiene items, bath accessories, feminine personal hygiene items, toilet paper, and other related products.

## Attachment C - Pricing/Catalog

This contract has a dynamic pricing structure in which the price for items listed on the online digital marketplace is driven by the market. This contract will not need to be amended when prices fluctuate.

[www.bobbarker.com](http://www.bobbarker.com)

| <b>Product Categories</b>            | <b>Discount</b> |
|--------------------------------------|-----------------|
| <b>Bedding and Linens</b>            |                 |
| Bedspreads                           | 15%             |
| Blankets                             | 15%             |
| Mattress Covers                      | 15%             |
| Pillows                              | 15%             |
| Pillowcases                          | 15%             |
| Sheets                               | 15%             |
| Towels and Washcloths                | 15%             |
| Other Subcategories                  | 15%             |
| <b>Mattresses</b>                    |                 |
| Institutional Mattresses             | 10%             |
| Shower Curtains                      | 10%             |
| Other Subcategories                  | 10%             |
| <b>Clothing, Underwear and Socks</b> |                 |
| Uniforms, Jumpsuits and Scrubs       | 25%             |
| Work Clothes                         | 25%             |
| Outerwear                            | 25%             |
| Activewear                           | 25%             |
| Transport Clothing                   | 25%             |
| Underwear and Socks                  | 25%             |
| Slipper Socks                        | 25%             |
| Disposables                          | 25%             |
| Release Clothing                     | 25%             |
| Other Subcategories                  | 25%             |
| <b>Footwear</b>                      |                 |
| Sandals, Shower Shoes and Flip-Flops | 10%             |
| Shoes, Oxfords and Boots             | 10%             |
| Slippers, Step-Ins and Pullovers     | 10%             |
| Tennis Shoes                         | 10%             |
| Shoe Accessories                     | 10%             |
| Other Subcategories                  | 10%             |

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| <b>Product Categories</b>                  | <b>Discount</b>         |
|--|-------------------------|
| <b>Furnishings: Bathroom and Furniture</b> |                         |
| Seating Solutions                          | PLEASE CALL FOR PRICING |
| Table Solutions                            | PLEASE CALL FOR PRICING |
| Visitation Stations                        | PLEASE CALL FOR PRICING |
| Mold Seating                               | PLEASE CALL FOR PRICING |
| Mirrors                                    | PLEASE CALL FOR PRICING |
| Other Subcategories                        | PLEASE CALL FOR PRICING |
| <b>Laundry and Laundry Bags</b>            |                         |
| Laundry Carts                              | 15%                     |
| Laundry Utility Trucks                     | 15%                     |
| Laundry Hampers                            | 15%                     |
| Laundry Baskets                            | 15%                     |
| Kangaroo Carts                             | 15%                     |
| Property Bags                              | 15%                     |
| Laundry Net or Mesh Bags                   | 15%                     |
| Mesh Storage Bags                          | 15%                     |
| Strong Boxes                               | 15%                     |
| Hanging Lockers                            | 15%                     |
| In-Cell Organizers (Clear and Mesh)        | 15%                     |
| Evidence Storage Bags                      | 15%                     |
| Other Subcategories                        | 15%                     |
| <b>Hygiene and Personal Care</b>           |                         |
| Combs and Hairbrushes                      | 8%                      |
| Shampoo and Body Baths                     | 5%                      |
| Liquid Soap and Body Lotions               | 5%                      |
| Bar Soaps                                  | 5%                      |
| Feminine Hygiene                           | 8%                      |
| Toothpastes and Mouthwashes                | 8%                      |
| Disposable Razors and Shaving Creams       | 8%                      |
| Other Subcategories                        | 8%                      |

| <b>Product Categories</b>                                     | <b>Discount</b> |
|---|-----------------|
| <b>Medical Supplies</b>                                       |                 |
| Masks   | 15%             |
| Over-the-Counter Drugs  | 15%             |
| Pain Relieving Lotions and Creams                             | 15%             |
| Equipment: Sharp Containers, Spill Kits and Misc.             | 15%             |
| Infection Control Supplies                                    | 15%             |
| Other Subcategories   | 15%             |
| <b>Examination Gloves</b>                                     |                 |
| Nitrile Gloves  | 10%             |
| Latex Gloves  | 10%             |
| Powdered Nitrile Gloves                                       | 10%             |
| Powdered Latex Gloves   | 10%             |
| Other Subcategories   | 10%             |
| <b>Recreation</b>   |                 |
| Recreation and Games: Books, Puzzles, Cards, Sports and Games | 15%             |
| Batteries   | 15%             |
| Electronics: Radios, DVD Players and Misc.                    | 15%             |
| Office Supplies: Security Pens, Pencils, SketchPads and Paper | 15%             |
| Other Subcategories   | 15%             |
| <b>Resident Safety</b>  |                 |
| Suicide Safety Bedrolls                                       | 10%             |
| Suicide Smocks  | 10%             |
| Suicide Blankets  | 10%             |
| Padded Helmets  | 10%             |
| Other Subcategories   | 10%             |
| <b>Officers Only</b>  | <b>10%</b>      |
| <b>Restraints</b>   | <b>10%</b>      |