

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")

MASTER AGREEMENT
Master Agreement No: MNWNC-130
Transource Service Corporation
(hereinafter "Contractor")
And
State of Montana
(hereinafter "Participating State/Entity")

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1. **Scope:** This addendum allows for purchase of the following Computer Equipment/Services: Band 1 Desktop, Band 2 Laptop, Band 3 Tablet, Band 4 Server, and Band 5 Storage, led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state /entity contracts, and which receives prior written approval of the state's chief procurement official.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum.

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

COOPERATIVE PURCHASING: Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

3. **Order of Precedence:**

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement
2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

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These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor, unless such terms are referenced in the Master Agreement. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement:

4.1. ACCESS AND RETENTION OF RECORDS:

Contractor agrees to provide the department, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

4.2 COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

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- 4.3 NON-COMPLIANCE WITH DEPARTMENT OF ADMINISTRATION REQUIREMENTS:** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, with mutual written agreement of Contractor, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.
- 4.4 NON-EXCLUSIVE CONTRACT:** The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.
- 4.5 REDUCTION OF FUNDING:** The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. Any such termination shall not affect the State or Contractor's obligations on orders accepted prior to the date of termination. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.
- 4.6 REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

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If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

4.7. **VENUE:** The parties agree that any litigation concerning Montana's usage of the subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA)

4.8. **ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA). Notwithstanding the foregoing, consistent with commercial practice, Contractor shall be permitted to subcontract with or engage with its commercial contract manufacturers, partners and third party service providers to perform its responsibilities under this Participating Addendum.

4.9. **LEASING:** Leasing is NOT authorized under this Participating Addendum.

4.10. **INDEMNIFICATION:** Supplementation is hereby made to Paragraph C17 of the MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD WITH TRANSOURCE FOR COMPUTER EQUIPMENT – Supplemental language is identified below in bold and enclosed in parenthesis: [...]

C17. INDEMNIFICATION.

The Contract Vendor shall indemnify, protect, save and hold harmless the Lead State and the Participating Entity, its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the Lead State and the Participating Entity arising from the performance of the Master Agreement by the Contract Vendor or its agents, employees, or subcontractors for personal injury or damage to real property or tangible personal property arising from the negligence or willful acts or omissions, **[or the alleged negligence or alleged willful acts or alleged omissions]** of the Contract Vendor, its agents, employees or subcontract Vendors. The Contract Vendor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entities, and/or their respective representatives and employees. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the Lead State's and Participating Entity's failure to fulfill its obligations pursuant to the Master Agreement.

If the Participating Entity's laws require approval of a third party to defend Participating

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Entity, Participating Entity will seek such approval and if approval is not received, Contract Vendor is not required to defend that Participating Entity.

4.11. APPROVED BAND(S): Orders for all Bands (1-5) are allowed under this PA.

4.12. REQUIRED REPORTING: Contractor shall submit quarterly reports to the Contacts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel) which will list the following information at the minimum: purchasing entity, description of items purchased, date of purchase, contract price, retail price, and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

4.13. MONTANA ADMINISTRATIVE FEE: The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described above. The Administrative Fee must be submitted by ACH along with email notification to the CO.

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

Contractor

Name	Curtis Wescott
Address	2405 W. Utopia Road, Phoenix, AZ 85027
Telephone	800-486-3715
E-mail	curtisw@transource.com

Participating Entity

Name	Steve Haynes
Address	125 N. Roberts St., Helena, MT 59620
Telephone	406-444-2516
E-mail	shaynes@mt.gov

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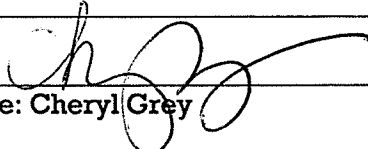
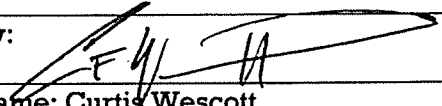
6. Partner Utilization: Each state represented by NASPO ValuePoint participating in this Master Agreement independently have the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. The Contractor's partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

Contractor will be utilizing certain approved partners under this Participating Addendum. Contractor will separately provide the State of Montana with its list of approved partners.

7. Terms. The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

8. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order. If a purchase order or task order has terms and conditions that conflict with the Master Agreement or Participating Addendum terms and conditions, the Master Agreement or Participating Addendum terms and conditions govern.

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

Participating State: Montana	Contractor: Transource
By: 	By: 
Name: Cheryl Grey	Name: Curtis Wescott
Title: Administrator, State Financial Services Division	Title: NASPO ValuePoint Contract Manager
Date: 2/3/17	Date: 02/02/2017

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Approved as to Legal Content:	State of Montana CIO
By: <i>Mike Manion</i>	By: <i>Lynne Piggini for Ron Baldwin</i>
Name: Mike Manion	Name: Ron Baldwin
Title: Chief Legal Counsel	Title: CIO
Date: 2-2-2017	Date: 2-3-17