

**MASTER AGREEMENT FOR
TRAVEL MANAGEMENT SERVICES
NO. 7540**

This Master Agreement for Travel Management Services ("Agreement") is between the State of Oregon ("State") acting by and through its Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS") for the benefit of the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint") and other Purchasing Entities ("Purchasing Entity"), and Corporate Travel Management North America, Inc. ("Contractor"). DAS and Contractor may be referred to herein as "Party" or "Parties".

RECITALS

- A. On or about December 20, 2016, DAS released a Request for Proposal for Travel Management Services on behalf of the member states of NASPO ValuePoint., RFP DASPS-2189-15.
- B. Contractor was the successful Proposer.
- C. Contractor wishes to provide the travel management services to the member states of NASPO ValuePoint.

AGREEMENT

The Parties agree as follows:

1. CONTRACT DOCUMENTS; PARTICIPATING ADDENDUM; DEFINITIONS.

1.1 Master Agreement Contract Documents. This Agreement consists of the following documents, which are listed in descending order of precedence:

- This Agreement less all exhibits,
- Exhibit D (NASPO Terms and Conditions)
- Exhibit A (Scope of Products and Services and Applicable Rates)
- Exhibit C (Required Insurance)
- Exhibit B (Form Participating Addendum)

Exhibits A - D are attached hereto and incorporated herein by this reference.

1.2 Participating Addendum. From time to time, Participating States/Entities may enter into Participating Addenda with Contractor, in a form substantially similar to Exhibit B, and each may negotiate its own State Specific Terms and Conditions with Contractor. Participating State/Entity may define, in the Participating Addendum, the applicable methods or processes available to Purchasing Entities and their Travelers to create accounts and request Services.

In the event of a conflict between the terms and provisions of this Agreement and the terms and conditions of a Participating Addendum entered into between a Participating

State/Entity, the terms and provisions of the Participating State/Entity's Participating Addendum will control for conflicts under that Participating Addendum.

1.3 Definitions.

"Contract" means any agreement between Contractor and Purchasing Entity for the Services, including a Request for Service.

"Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.

"Days" means calendar days.

"Embedded Software" means one or more software applications which permanently reside on a computing device.

"GSA Per-Diem Lodging" means the domestic GSA lodging per diem allowance rate in effect at the location and on the date of the room occupancy as published on the Internet at <https://www.gsa.gov/portal>, as Federal Travel Regulation (FTR) Bulletins.

"Intellectual Property" means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

"NASPO ValuePoint" means the NASPO ValuePoint Cooperative Purchasing Program that is managed by the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

"Open Source Elements" means any software or application subject to any open source initiative certified license, including Work Product based upon any open source initiative certified licensed work.

"Original Work" means all Work Product created by Contractor pursuant to the Services, which includes all derivative works and compilations.

"Participating Addendum" means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

"Participating Entity" means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states, authorized by a state to enter into a Participating Addendum and who establishes an Request for Services under the Agreement for the issuance of certain Requests for Services and becomes financially committed to the purchase. The conditions for participation are set forth in section 5 of Exhibit D.

"Political Subdivision" means a county, city, school district, law enforcement authority, special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

"Purchasing Entity" means an entity with Travelers setting up an account with Contractor for the Services under this Agreement.

“Purchasing Entity Data” means all information and data created by or in any way originating with Purchasing Entity, and all data about a Purchasing Entity or specific to a Purchasing Entity that is created by Contractor or that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with Purchasing Entity, whether such data or output is stored on Purchasing Entity’s hardware, Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by Purchasing Entity or by Contractor.

“Request for Services” means the process or method for ordering or request initiated by a Traveler requesting Services, whether in person, in writing, by phone or other electronic means.

“Services” means the travel management services to be provided by Contractor pursuant to a Request for Services as described in Exhibit A.

“SMART” is Contractor’s customer service portal, operated and maintained by Contractor, which gives access to reporting, data, approval of pre-trips, check-in for flights, alerts of travel changes, and fare forecaster.

“System” means all online booking tools and portals available for use by the Participating Entities and maintained by Contractor.

“Supporting Contract” refers to other travel related contracts established by Oregon or other Participating Entities that Contractor may need to use in order to provide the Services.

“Third Party Intellectual Property” means any intellectual property owned by parties other than DAS, Participating State/Entity, Purchasing Entity or Contractor.

“Traveler Data” means all information and data created by or in any way originating with Traveler, and all data about a Traveler or specific to a Traveler that is created by Contractor or that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with Traveler, whether such data or output is stored on Traveler’s hardware, Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by Traveler or by Contractor.

“Traveler” means the person authorized to acquire Services (for official business) under this Agreement.

“Work Product” means every Product, invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to DAS, Participating State/Entity, or Purchasing Entity pursuant to the Services.

2. TERM; OPTION TO RENEW. This Agreement is effective on the date it has been signed by all Parties and all required State of Oregon approvals have been obtained (“Effective Date”). This Agreement expires on August 16, 2019 or the date Contractor has completed all Services in accordance with the requirements of this Agreement. The Parties may extend the term of this Agreement, upon written notice given to the other party at least 30 days prior to the end of the

then current term, for additional one, two or three year terms, provided, however, that the total term of this Agreement will not extend beyond 6 years from the Effective Date.

2.1 One-month Extension: Notwithstanding the foregoing, DAS, in its sole discretion, may extend this Agreement for a maximum of 1 calendar month beyond the term. The Contract Administrator shall notify the Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one month extensions under this Section are not allowed.

3. SERVICES.

3.1. Establishment of Account. From time to time, Purchasing Entities may request and work with Contractor to establish a travel account and the applicable documentation and processes permitting Travelers to obtain one or more of the Services described in the Scope of Services attached hereto as Exhibit A.

DAS, upon agreement with Contractor, may add related services to this Agreement.

3.2 Requests for Service. Once an account is established and the Purchasing Entity and Contractor have agreed upon an ordering process, Travelers may order or submit requests for one or more of the Services by a method and in a form to be agreed upon between Contractor and Purchasing Entity ("Request for Service").

3.3. Non -exclusive. This Agreement is not exclusive. A Purchasing Entity may have one or more agreement(s) for the Products or Services or similar products or services. Purchasing Entity may request Services from and enter into agreements with Contractor pursuant to the terms and conditions of this Agreement and a Participating Addendum. Contractor may provide Services to any third party, provided Contractor may not sacrifice the quality of the Services provided to Purchasing Entity for the benefit of another client.

3.4. Lead State Contract Administrator and NASPO ValuePoint; Reporting.

3.4.1 Lead State Contract Administrator and NASPO ValuePoint Account Manager

3.4.1.1 The Lead State Contract Administrator is:
Kaliska King, CPPB, OPBC
State Procurement Analyst
Phone: 503.378.5332
Email: Kaliska.King@Oregon.gov

3.4.1.2 The NASPO ValuePoint Account Manager is:
Tim Hay
Cooperative Development Director
Phone: 503.428.5705
Email: THay@NASPOValuePoint.org

3.4.2 Reporting

3.4.1.1 NASPO ValuePoint Reporting

Contractor shall provide reports on quarterly basis reporting of benchmarked savings of the NASPO ValuePoint contracted rates versus published rates. Every six (6) months, Contractor and the NASPO ValuePoint Account Manager shall conduct a total travel review. This review will communicate lost savings, room for improvement, benchmarking, and the future of your travel program. The Contract Administrator can access the reporting tool and other site administration functions as part of their user access role in both Booking Tool and iBank or other reporting tools. These requirements outlined in Sections 7 and 8 of the NASPO ValuePoint Terms and Conditions.

3.4.2.1 Growth of the NASPO ValuePoint Travel Program

- a. Annual case studies with content to be shared with NASPO Members for direct messaging to increase program adoption.
- b. New tools as they are made available to encourage managed travel use by other states and enhance current participating states.

3.4.3 Work with Participating Entities and Potential new Entities is they need assistance with travel policy changes or creation. Assist in modernization, contacting, emerging technology and cooperative purchasing.

3.4.4 Contract Management

3.4.4.1 Annual Review Meetings

Meet with the Master Services Agreement Contract Administrator annually to go over program performance.

3.4.4.2 Account Representative

Provide a dedicated account manager(s) to support each Participating Entity. The account manager will be responsible for implementation, setting up the online travel reservation system, website, providing access and comprehensive reporting, benchmarking, conduct reviews, , creating travel program seminars and trainings resolving client services and reservation issues with Participating Entities including Traveler issues.

3.5. Purchasing Entity or Purchasing Entity Resources. If any Contract or Request for Service under this Agreement requires Purchasing Entity or Traveler to provide any resources, and Purchasing Entity or Traveler fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner but for a period not to exceed 30 days, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by Purchasing Entity's or Traveler's failure.

4. COMPENSATION.

4.1. Purchasing Entity shall pay Contractor for Services performed and accepted by Purchasing Entity or its Travelers. Purchasing Entity will not pay Contractor for Services performed before the date this Agreement or the applicable Request for Service or after the termination of this Agreement.

4.2. Upon renewal of the Agreement, the Parties may review and request a rate change to the Agreement. The Party requesting the change shall send written notice to the other Party at last 30 Days prior to the end of the then current term. The notice should include the requested change(s) and reason for the change(s). The Parties shall negotiate in good faith. The renegotiated rates will be effective on all existing and future Services obtained from Contractor on the amendment signing date.

4.3. Price Renegotiation: Contractor shall keep pricing specified in Exhibit A fixed for at least the first 12 full months of this Agreement. Thereafter, DAS and Contractor may adjust pricing no more than once annually by Agreement amendment. Contractor shall submit all pricing increase requests to DAS in writing and provide substantiating evidence that each request is based on demonstrable market changes impacting the cost of the Services. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS. DAS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data or any other relevant manufacturer or industry data substantiating the increase. However, a price increase may not produce a higher profit margin for Contractor than at the beginning of the initial term of this Agreement. The increase may not exceed 2% of the price immediately before the increase. Pricing changes will apply to Contracts and amendments to Contracts entered on and after the effective date of the pricing change.

4.4. Purchasing Entity shall make payments in accordance with the requirements in Exhibit A.

4.5. Purchasing Entity will pay only for Services performed that are accepted by Purchasing Entity, or its Travelers

4.6. Expenses. Purchasing Entity will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in a specific Contract.

4.7 Payment and Invoicing:

4.7.1 Payment for Services

- a. All purchases by a Participating State/Entity or Purchasing Entity must be made using a method of payment listed in each Participating Addendum. This includes but is not limited to Purchasing Cards or Travel cards. A personal Travelers credit card is prohibited, unless a part of the Participating State's/Entity's Travel policy.
- b. Comply with all current Payment Card Industry Data Security Standards (PCI DSS).

4.7.2 Payment Method

- a. Participating Entity and third party provider (i.e. hotel or car Rental Company) shall agree upon the method of payment. Provided, however, that the third party providers shall accept all major credit cards (Visa, MasterCard, Discover, and American Express) and Contractor shall accept all major credit cards (Visa, MasterCard, Discover, and American Express) through its booking tool's.
- b. Additional fees, taxes, surcharges or any other charges shall not be assessed to the Traveler when accepting major credit cards for payment unless otherwise stated within this Agreement or Addendum thereto or required by law. Contactor shall not pre-charge estimated room charges or first day or night room charges or rental charges.

4.7.3 Billing Dispute Resolution: The Contract Administrator may dispute charges by sending Contractor written notice detailing the dispute within 30 days of the date of invoice. Contractor shall investigate the dispute and make appropriate adjustments to specific account.

4.8. EFT Transaction Procedures. Contractor and Purchasing Entity may establish procedures for EFT transactions at the time of account setup. In the event Contractor, during the term for the account, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and required information specified above must be received by the Contract Administrator a minimum of 60 days prior to the effective date of change. Contractor's failure to provide accurate information in a timely manner may delay payment of amounts otherwise properly due.

4.9. Funds Available and Authorized; Payments. Purchasing Entity's payment of amounts under a Contract is contingent on Purchasing Entity receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to make payments under the Contract. Purchasing Entity shall not order Services under a Contract unless it has received appropriate funding to meet its financial obligations to such Service requests.

5. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

5.1. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by DAS, Participating State/Entity or Purchasing Entity. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in Section 5 of this Agreement.

5.2. Contractor shall perform all Services as an independent contractor. Although DAS, Participating State/Entity or Purchasing Entity have the right (i) to determine and modify the delivery schedule for Services to be performed and (ii) to evaluate the quality of the completed performance, DAS, Participating State/Entity or Purchasing Entity cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Agreement.

Contractor certifies, represents and warrants that Contractor is an independent contractor of DAS, Participating State/Entity, and Purchasing Entity under all applicable state and federal law. Contractor is not an "officer", "employee", or "agent" as those terms are used in ORS 30.265 of the State or DAS.

5.3. If Contractor is currently performing work for a state or the federal government or any other entity, Contractor by signature to this Agreement represents and warrants: Contractor's performance of this Agreement and any Contract issued hereunder creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing entity (if state or federal agency) would prohibit Contractor's performance of this Agreement or any Contract.

5.4. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Agreement and any Contract, and Purchasing Entity will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Agreement or any Contract.

6. INTELLECTUAL PROPERTY; OPEN SOURCE.

6.1. **Original Works.** Original Work shall be the exclusive property of Purchasing Entity. Purchasing Entity and Contractor agree that the Original Work is "work made for hire" of which Purchasing Entity is the author within the meaning of the United States Copyright Act. If for any reason the Original Work is not "work made for hire", Contractor irrevocably assigns to Purchasing Entity any and all of its rights, title, and interest in the Original Work. Upon Purchasing Entity's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Purchasing Entity.

6.2. **Contractor Intellectual Property.** Contractor grants to Purchasing Entity a non-exclusive, royalty-free license to and right to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property contained in or necessary for the use of the Work Product, and to authorize others to do the same on Purchasing Entity's and Travelers' behalf.

6.3. **Third Party Works.** Contractor shall secure on Purchasing Entity's behalf and in the name of Purchasing Entity, a non-exclusive, royalty-free license and right to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Third Party Intellectual Property contained in or necessary for the use of the Work Product, and to authorize others to do the same on Purchasing Entity's behalf.

6.4 **Purchasing Entity Data.** Purchasing Entity owns all Purchasing Entity Data. Purchasing Entity grants to Contractor a limited right to use Purchasing Entity Data for the purposes of providing the travel management Products and Services only and for the term of Purchasing Entity's Contract only.

6.5 Traveler Data. Traveler owns all Traveler Data. Traveler grants to Contractor a limited right to use Traveler Data for the purposes of providing the travel management Services only for the term of this Agreement only.

6.6. Open Source Approval and Notice. Any Open Source Elements in the Work Product must be approved in advance and in writing by Purchasing Entity. If Purchasing Entity approves the use of Open Source Elements, Contractor shall:

- a. Notify Purchasing Entity in writing that the Work Product contains Open Source Elements;
- b. Identify the specific portion of the Work Product that contain Open Source Elements; and
- c. Provide a copy of the applicable license for each Open Source Element to Purchasing Entity.

7. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants that:

7.1. Contractor has the authority to enter into and perform in accordance with this Agreement and that this Agreement when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

7.2. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with the highest Standards applicable to Contractor's industry, trade or profession;

7.3. Contractor is and shall be, at all times during the term of this Agreement qualified, professionally competent, and duly licensed to perform Services;

7.4. Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order;

7.5. Contractor's performance under this Agreement to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Agreement;

7.6. Contractor personnel providing services under this Agreement are employees of Contractor; that Contractor withholds applicable income taxes from the pay of its employees; that Contractor pays workers' compensation insurance premiums arising from the employment of its employees under this Agreement that Contractor makes all other applicable tax and related payments arising from that employment (including without limitation social security tax payments); and that Contractor provides employee benefits to

its employees, including without limitation health insurance benefits, vacation benefits, and retirement benefits;

7.7. Contractor will maintain, operate and enforce, prior to receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, as that term is used in ORS 646A.602(11), including Social Security numbers, an active and effective information security program to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control; and

7.8. When used as authorized by this Agreement, no Work Product infringes nor will Purchasing Entity's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

8. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

8.1. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Agreement or to Contractor's obligations under this Agreement, as those laws, regulations and ordinances may be adopted or amended from time to time.

8.2. Contractor shall comply with all Participating State/Entity's and Purchasing Entity's security and access policies and procedures, including without limitation (a) obtaining nondisclosure agreements from Contractor's employees and agents who are performing Services and providing copies of such agreements to Purchasing Entity and (b) performing criminal background checks on each of Contractor's employees and agents who are performing Services, and providing a copy of the results to Participating State/Entity and Purchasing Entity, and, if applicable, (c) Participating State/Entity's Purchasing Entity's security and access policies and procedures related to Federal Tax Information pursuant to IRS Publication 1075.

9. CONFIDENTIAL INFORMATION.

9.1 **Confidential Information.** Contractor acknowledges that it and its employees or agents may, in the course of performing the Services under this Agreement, be exposed to or acquire information that is confidential to DAS, Participating State/Entity, Purchasing Entity, Travelers or their clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Agreement, including Purchasing Entity Data and Traveler Data, shall be deemed to be confidential information of DAS, Participating State/Entity, Purchasing Entity, or Travelers ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by DAS, Participating State/Entity, Purchasing Entity, or Travelers to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other DAS, Participating State/Entity, Purchasing

Entity, or Travelers than without the obligation of confidentiality, (e) is disclosed with the written consent of DAS, Participating State/Entity, Purchasing Entity, or Travelers, or (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

9.2 .Non-Disclosure. Contractor agrees to hold Confidential Information in confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to DAS, Participating State/Entity, Purchasing Entity, or Travelers hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist DAS, Participating State/Entity, Purchasing Entity, or Travelers in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise DAS, Participating State/Entity, Purchasing Entity, or Travelers, as applicable, immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with DAS, Participating State/Entity, Purchasing Entity, or Travelers in seeking injunctive or other equitable relief in the name of DAS, Participating State/Entity, Purchasing Entity, or Travelers or Contractor against any such person. Contractor agrees that, except as directed by DAS, Participating State/Entity, Purchasing Entity, or Travelers, as applicable, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at DAS, Participating State/Entity, Purchasing Entity, or Travelers request, Contractor will turn over to DAS, Participating State/Entity, Purchasing Entity, or Travelers all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality Assurance, audits and evidence of performance of the Services.

9.3 Security Policies / Non-Disclosure Agreement. Contractor agrees to comply with all reasonable requests by DAS, Participating State/Entity, or Purchasing Entity to ensure the confidentiality and nondisclosure of DAS, Participating State/Entity, Purchasing Entity, or Travelers Confidential Information, including without limitation: (a) obtaining nondisclosure agreements from Contractor's employees and agents who are performing Services and providing copies of such agreements to DAS, Participating State/Entity or Purchasing Entity, (b) performing criminal background checks on each of Contractor's employees and agents who are performing Services, and maintaining records of those background checks in the Contractor's files for a period 6 years past the Agreement expiration. Such records shall be made available upon court order, and (c) DAS, Participating State/Entity or Purchasing Entity security and access policies and procedures.

9.4 Injunctive Relief. Contractor acknowledges that breach of this Section 9, including disclosure of any Confidential Information, may cause irreparable injury to DAS, Participating State/Entity, Purchasing Entity, or Travelers that is inadequately compensable in damages. Accordingly, DAS, Participating State/Entity, Purchasing Entity, or Travelers may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of DAS, Participating State/Entity, or Purchasing Entity and are reasonable in scope and content.

9.5 Publicity. Contractor agrees that news releases and other publicity relating to the subject of this Agreement will be made only with the prior written consent of DAS.

10. INDEMNIFICATION; LIMITATION OF LIABILITY.

10.1. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, PARTICIPATING STATE/ENTITY, PURCHASING ENTITY AND THEIR AGENCIES, OFFICERS, DIRECTORS, AGENTS, TRAVELERS, AND EMPLOYEES FROM AND AGAINST ALL 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 INTENTIONAL, RECKLESS OR GROSS NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT AND ANY CONTRACT ISSUED HEREUNDER, INCLUDING: **(I)** ANY CLAIM THAT CONTRACTOR, A SUBCONTRACTOR, OR CONTRACTOR'S STAFF OR A SUBCONTRACTOR'S STAFF ARE EMPLOYEES OF THE STATE OR PARTICIPATING STATE/ENTITY OR PURCHASING ENTITY FOR ANY REASON, AND **(II)** ANY CLAIM AGAINST THE STATE OR PARTICIPATING STATE/ENTITY OR PURCHASING ENTITY, WHICH, IF TRUE, WOULD CONSTITUTE A BREACH BY CONTRACTOR OF ANY OF THE REPRESENTATIONS, WARRANTIES, OR COVENANTS SET FORTH IN THIS AGREEMENT OR ANY CONTRACT OR REQUEST FOR SERVICE ("CLAIM").

10.2. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 10.1, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, PARTICIPATING STATE/ENTITY, PURCHASING ENTITY AND THEIR AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL THIRD PARTY CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, STATUTORY PENALTIES, COSTS, AND EXPENSES ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS AGREEMENT OR ANY CONTRACT OR REQUEST FOR SERVICE BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR PURCHASING ENTITY'S REASONABLE USE THEREOF, WILLFULLY INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

10.3. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

10.4. NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS), REGARDLESS OF THE FORESEEABILITY THEREOF, EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS FROM ANY SUCH CLAIM.

11. ASSIGNMENT OF ANTITRUST RIGHTS.

11.1. CONTRACTOR IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT OR PARTICIPATING ADDENDUM, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

11.2. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS AGREEMENT OR A PARTICIPATING ADDENDUM TO IRREVOCABLY ASSIGN TO STATE, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS AGREEMENT OR PARTICIPATING ADDENDUM, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

12. INSURANCE. Contractor shall obtain the insurance set forth on Exhibit C prior to performing under this Agreement and shall maintain insurance, as required by DAS, throughout the duration of

this Agreement and all warranty periods. DAS, Participating State/Entity or Purchasing Entity may request additional insurance coverage.

13. EVENTS OF BREACH BY CONTRACTOR. Contractor breaches this Agreement if:

- (a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (b) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within 30 days after DAS delivers notice of breach to Contractor or a longer period as DAS may specify in the notice; or
- (c) Contractor commits any material breach of any covenant, warranty, obligation or certification under this Agreement, fails to perform its obligations under this Agreement within the time specified or any extension of that time, and Contractor fails to cure the breach within 30 days after DAS as applicable, delivers notice of breach to Contractor or a longer period as DAS may specify in the notice.

14. DAS REMEDIES.

If Contractor is in breach under Section 13, then DAS may, at DAS' option, pursue any or all of the remedies available under this Agreement and at law or in equity, including, but not limited to:

- 14.1 Termination of this Agreement under Section 15;
- 14.2 Suspension of the Services under Section 15;
- 14.3 Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- 14.4 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
- 14.5 Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and DAS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under Section 13, the rights and obligations of the parties shall be the same as if this Agreement was terminated pursuant to Section 15.1.ii or was terminated pursuant to section 15.2.ii.

15. SUSPENSION; TERMINATION; TRANSITION.

15.1. DAS Suspension and Termination Rights:

- (a) DAS may, at its sole discretion, suspend the Services under this Agreement, upon written notice to Contractor, setting forth the length of the proposed suspension.
- (b) DAS may, at its sole discretion, terminate this Agreement without cause upon at least 30 days written notice by DAS to Contractor.
- (c) DAS may, in its sole discretion, terminate this Agreement, immediately upon notice to Contractor, or at a later date as DAS may establish in the notice, if Federal or state laws,

regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Purchasing Entities under this Agreement is prohibited; or

(d) DAS may terminate this Agreement upon written notice to Contractor, or at a later date as DAS may establish in the notice, if Contractor is in breach under Section 13.

Contractor shall stop performance under this Agreement as directed by DAS in any written notice of termination delivered to Contractor under this Section 15.

15.2 Effect of Termination of this Agreement. The termination of this Agreement does not automatically terminate any Contracts in effect on the date of termination. Any Participating Addenda or Contracts entered into prior to the termination or expiration date of the Agreement shall remain in full force and effect pursuant to their terms and pursuant to the terms of this Agreement beyond the termination date, provided, however, that Purchasing Entities may not further extend, amend or revise the Participating Addendum.

15.3. Transition Services: Contractor shall provide transition services to DAS or a Participating Entity or Purchasing Entity to support a responsible and secure transition of Services to another service provider ("Transition Services") provided all payments due and owing to Contractor have been paid in full.

15.3.1 Upon receipt of a notice prior to expiration that DAS, Participating State/ Entity, or Purchasing Entity will engage Contractor's Transition Services, or receipt of notice of termination and notwithstanding the reason for termination (whether for cause or without cause and whether by Contractor or DAS, Participating State/Entity, or Purchasing Entity and whether for all or some Services), Contractor shall continue to provide all Services and shall provide Transition Services as described in the Transition Plan (defined below) for the period set in the notice and in the subsequent Transition Plan (the "Transition Period"), on the following conditions:

15.3.1.1 DAS and Participating State/Entity or Purchasing Entity is up-to-date with its undisputed payment obligations at the commencement of the Transition Period, and

15.3.1.2 Participating State/Entity or Purchasing Entity pays all undisputed invoices during the Transition Period.

15.3.2 If during the Transition Period Contractor believes Participating State/Entity or Purchasing Entity is not in compliance with the foregoing conditions, Contractor shall give Participating State/Entity or Purchasing Entity written notice of such noncompliance and Participating Entity or Purchasing Entity will have 15 Days, or such longer period to which the parties may agree, to correct the noncompliance before Contractor may end the Transition Period.

15.4 Transition Plan: Contractor and Participating State/Entity or Purchasing Entity will outline a Transition Plan, which may be requested pursuant to a notice of termination or in anticipation of the Contract terminating in accordance with its terms. The Transition Plan may serve as an update to or a confirmation of a Transition Services Task in the Statement of Services. Contractor shall deliver a detailed Transition Plan within 14 Days of

Participating State/Entity's or Purchasing Entity's written request, or otherwise within a timeframe agreed upon by the parties, for Agency review. The Transition Plan must address at least:

- 15.4.1 The respective Tasks and Deliverables in the Transition Plan to be completed by each party in during the Transition Period,
- 15.4.2 A schedule identifying which party is responsible for paying the cost (if any) related to each Task and Deliverable. This schedule may include Transition Services that will not exceed the current Contract NTE. If the parties agree Transition Services require new or additional Services that cause an increase in the Contract NTE, the Transition Plan will be in the form of a Contract amendment
- 15.4.3 The parties will cooperate in good faith with each other in connection with their obligations under this Section and will perform their obligations under the Transition Plan. If the Transition Period extends beyond the Contract term, the provisions of this Contract will remain in effect for the duration of the Transition Period.
- 15.4.4 Contractor shall complete the transition of DAS', or Participating State/Entity's or Purchasing Entity's Data from Contractor and its subcontractors to Participating State/Entity or Purchasing Entity and to any providers that DAS, Participating Entity or Purchasing Entity designates, without causing any unnecessary interruption of or adverse impact on the Services.
- 15.4.5 Without limiting the generality of the aforementioned obligations, Contractor shall:
 - 15.4.5.1 Cooperate with Participating State/Entity or Purchasing Entity and any Participating State/Entity or Purchasing Entity-designated provider by promptly taking all steps required to assist in completing the Transition Plan.
 - 15.4.5.2 Provide Participating State/Entity or Purchasing Entity and any Participating State's/Entity's or Purchasing Entity's provider with all information regarding the Application Services, Participating State/Entity Data, Purchasing Entity Data and Deliverables that these parties will need to complete the Transition Period. This includes data conversions, data access or transfers, and interface specifications.

15.5. Return of Property. In the event of termination of this Agreement for whatever reason and subsequent termination of a Participating Addendum or Contract, Contractor shall deliver to DAS, Participating State/Entity or Purchasing Entity all DAS', Participating State/Entity's or Purchasing Entity's property, documents, data, information, works-in-process, , and other property that are or would be delivered to DAS, Participating State/Entity or Purchasing Entity had the Services been completed. Upon DAS', Participating State/Entity's or Purchasing Entity's request, Contractor shall surrender to anyone DAS, Participating State/Entity or Purchasing Entity designates, all documents, information, data, research, works-in-process, Work Product and other property, that are deliverables or would be deliverable Contractor.

16. 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 Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

17. DISPUTE RESOLUTION; VENUE; CONSENT TO JURISDICTION.

17.1. Dispute Resolution. In the event that the Parties have any disagreement, dispute, breach or claim of breach, non-performance, or repudiation arising from, related to or in connection with the Agreement or any of the terms or conditions thereof, or any transaction hereunder including but not limited to either Party's failure or alleged failure to comply with any of the provisions of the Agreement (hereinafter collectively the "Dispute"), other than one related to the release of Confidential Information, the Parties shall first conduct the following procedure in an attempt to resolve the Dispute:

- The Parties shall make every effort to settle any Dispute through their respective managers, within 5 Days of one Party notifying the other Party of a Dispute.
- If the Dispute is not resolved between the managers, then either Party may initiate formal dispute resolution discussions by advising the other party in writing. The contact point for these discussions shall be the Parties' Authorized Representatives. The Parties shall attempt to resolve the Dispute within 5 Days of the notice from a Party that they are initiating this second level of Dispute resolution discussions. If the Parties mutually agree in writing that there has been substantial progress toward resolution of the Dispute, this second level may be extended for an additional 5 Day period which shall commence at the conclusion of the first 5 day period.
- If the Parties are unable to resolve the Dispute, the Parties may file suit as set forth below.

Nothing in this Section 17.1: (a) shall in any way limit a Party's rights to seek injunctive relief of any kind, at any time, with respect to any matter; (b) in any way limit DAS or Contractor's right to suspend or terminate the Agreement or Participating State/Entity's or Purchasing Entity's or Contractor's right to terminate or pursue other remedies available under the Agreement, by law or otherwise; (c) remove the requirement to provide notices or filings to meet deadlines otherwise required by law; or (d) constitute a waiver of the sovereign immunity of the State of Oregon.

17.2. Venue; Consent to Jurisdiction. Any Dispute between DAS and Contractor that arises from or relates to the Agreement will be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Dispute must be brought in a federal forum, then unless otherwise prohibited by law it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State of Oregon's sovereign or governmental immunity, whether derived from the Eleventh

Amendment to the United States Constitution or otherwise, or of any defenses to Claims or consent to jurisdiction based thereon.

18. NOTICES. All notices required under this Agreement will be in writing and addressed to the party's Authorized Representative, as identified below or in the Contract. Mailed notices are deemed received 5 days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative. Contractor shall send to DAS copies of all notices that Contractor sends to Purchasing Entity.

Contractor

Name: Corporate Travel Management

Attn: Tony Fuerte

Title: SVP-GM, Government-North America

Address: 2925 First Avenue South, Seattle, Washington 98134

Contact Telephone Number: 206.674.4438

E-Mail Address: tony.fuerte@travelctm.com

DAS

Name: Kaliska King, CPPB, OPBC

Title: Procurement Analyst

Address: 1225 Ferry St SE, Salem, OR 97301

Contact Telephone Number: 503.378.5332

E-Mail Address: Kaliska.King@oregon.gov

19. ATTORNEYS' FEES. Except for defense costs and expenses pursuant to Section 10, neither DAS nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Agreement.

20. TIME IS OF THE ESSENCE. DAS, Purchasing Entity and Contractor all agree that time is of the essence in the performance of their respective obligations under this Agreement and any Contract.

21. FORCE MAJEURE. Neither DAS nor Contractor are responsible for any failure to perform or for any delay in the performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue its performance. DAS may terminate this Agreement upon written notice to Contractor after DAS reasonably determines that the delay or breach will likely prevent successful performance of this Agreement Contractor.

22. ACCESS TO RECORDS. Contractor shall maintain all financial records in accordance with Generally Accepted Accounting Principles ("Financial Records"). Contractor shall retain, maintain, and keep accessible all Financial Records and all other records relevant to this Agreement

("Records") for minimum of 6 years, or a longer period as may be required by applicable law, following contract termination or full performance, the period required by applicable law following contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever ending is later. During this record-retention period, Contractor shall permit State and its duly authorized representative's access to the Records and Financial Records at reasonable times and places for purposes of examination and copying.

23. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

23.1. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services or Work required under this Agreement without DAS', Participating State/Entity's or Purchasing Entity's prior written consent, as applicable. In addition to any other provisions either DAS, Participating State/Entity, or Purchasing Entity may require, Contractor shall include in any permitted subcontract provisions to ensure that DAS, Participating State/Entity, and Purchasing Entity will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to Exhibit A (Scope of Services and Rates), Exhibit C (Insurance), Exhibit D (NASPO Terms and Conditions) and Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 25, 26, and 28 of this Agreement. DAS', Participating State/Entity's or Purchasing Entity's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement

23.2. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Agreement without DAS' prior written consent. DAS' written consent does not relieve Contractor of any obligations under this Agreement and any assignee, transferee, or delegate is considered Contractor's agent.

23.3. The provisions of this Agreement are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

24. INTENDED BENEFICIARIES. DAS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. Participating States/Entities, Purchasing Entity and Travelers are intended beneficiaries of the terms of this Agreement.

25. AMENDMENTS. Only DAS and Contractor may amend the provisions of this Agreement. No amendment to this Agreement is effective unless it is in writing signed by the Parties, and all approvals required by applicable law have been obtained.

26. WAIVER. No waiver of or consent to terms of this Agreement binds either Party unless in writing and signed by DAS and Contractor, and all necessary approvals have been obtained. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement is not a waiver by such Party of that or any other provision.

27. SEVERABILITY. If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

28. COUNTERPARTS. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

29. SURVIVAL. In addition to all provisions which by their nature extend beyond termination of this Agreement or full performance, the following provisions remain in effect beyond any termination of this Agreement or full performance: Sections 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 22, and Exhibits C and D.

30. INTEGRATION AND MERGER. This Agreement constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
- B. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
- C. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
- D. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Agreement and any Contract issued hereunder; and
- E. Contractor ___ is / ___ is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one).

State of Oregon acting by and through
the Department of Administrative Services,
Enterprise Goods and Services, Procurement Services

Contractor
Corporate Travel Management
North America, Inc.

By: Natalie Benson
Authorized Representative

Title: COO/CFO

Date: 8/16/2017

FEID# 47-5064085

By: Kelli R. [Signature]
Authorized Representative

Title: Procurement Manager

Date: 8/16/2017

Approved pursuant to ORS 291.047

By: Karen Johnson, via email
Senior Assistant Attorney General

Date: August 15, 2017

EXHIBIT A – DESCRIPTION OF SERVICES and RATES

GENERAL SERVICES FOR PARTICIPATING STATES: Contractor shall provide the following Services:

1.1 General Travel Management:

- 1.1.1 Comply with the Participating States'/Entities' travel policies, when booking travel for Travelers. Policies are included in each Participating Addendum.
- 1.1.2 Communicate via email or the online reservation system any travel industry changes to each Participating Entity on a monthly basis or sooner if they are immediately affected.
- 1.1.3 Verify rates and schedules before Traveler's departure date for all tickets issued. In the event carriers reduce fares, or the Participating Entity has negotiated a lower rate, Contractor will search out affected tickets and reissue them at a lower rate but inclusive of all change related fees and costs.
- 1.1.4 If applicable per the Participating States'/Entities' Travel Policy, work with Participating Entities and Travelers to track frequent flyer or reward numbers if provided by the Traveler.
- 1.1.5 Void tickets within the 24-hour window if allowed by the airline policy, while following the requirements of the Airline Reporting Corporation (ARC).
- 1.1.6 Supporting contracts will be the first option(s) offered to Travelers, including acceptance of required forms of payment per each contracts terms and conditions.
- 1.1.7 Have the ability to hold travel reservations for 24 hours.

1.2 System Management:

1.2.1 Online Booking Tool

- a. Make available multiple booking tools that are fully supported and maintained for Participating States/Entities to choose from for use. Each booking tool must be industry-wide recognized, non-proprietary tool with access to the GDS fares as well as Southwest airlines and SWABIZ fares.
- b. Each tool allows real time search and booking 24/7 capabilities on any computer with internet access, phone and other mobile devices. With a 98% up time annually. Tools that allow booking via mobile app are Concur and Lightning only. In addition, Contractor will have the SMART Portal accessible from any device without an application download.
- c. At a minimum other functions each booking tool must be available to do are: Allow booking air, car, rail and hotel, designate preferred carriers, incorporate GSA and preferred contract rates, allows internet fare search, allows profile maintenance,

personal and shared trip templates, is able to comply with each entities travel policy's, able to have a hierarchy system for travel arrangers and approvers, and tracks and can assist in lowering travel costs. Using the SMART FareForcaster is available to assist in forecasting future trip pricing, which can assist in lowering travel costs.

- d. Offer customized applications for approval and advanced planning. Participating Entities can customize workflows to meet their needs.
- e. The Booking tool must be configurable to show Participating Entities contracted rates for other travel services if applicable.
- f. Rental car and lodging rates must be identified on each booking tool, if the rates are a NASPO ValuePoint contracted rate, or if a Participating State/Entity has a contracted rate that needs to be considered first. If Participating State/Entity only wants contracted rates showing that will be in the Participating Addendum.
- g. Permit one-way, round trip, multi-segments, cloning, and multi-traveler reservations.
- h. Each tool must be on a secure website, password protected and contain a payment authorization system.
- i. Give the Participating States/Entities the ability to create unique passwords and set up new Travelers within their organizations hierarchy including Travelers.
- j. The ability to have travel arrangers within the Participating States/Entities book travel on the Travelers behalf.

- **Maintenance of Traveler Profiles**

- a. Shall be available to assist Participating States/Entities with routine cleanup and audit of profiled travelers.
- b. Approved Participating State/Entity Travel arrangers must be able to edit and maintain a Travelers profile as needed via online or by calling the Contractor.
- c. Have the ability to clone Travelers trips.

- **Travel Related Reservations**

- a. Have the ability to cancel and modify existing reservations.
- b. Have the ability to book, car, lodging, rail, airline, and other travel related services separately or together.
- c. Have the ability to modify travel reservations.

1.3 Customer and Agent Services:

13.1 Participating State/Entity Support

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- a. Provide travel agents to arrange reservations and issue tickets for airline, and rail along with reservations for vehicle and lodging. These services include domestic and international travel.
- b. Offer to Participating States/Entities the lowest available rates on travel and the lowest logistical available airfare. If the Participating State/Entity has a separate contract for air fare rates or other travel related services, these rates must be offered to the Participating State/Entity first if the schedule fits the traveler's needs.
- c. Answer phone calls 90% of the time within 20 seconds. The abandon rate shall be less than 3%.
- d. Provide a toll-free nation-wide reservation number for Participating States/Entities to call 24/7 at no additional cost.
- e. Have staff available via these outlets 24/7: email, phone support and assistance through a click to dial mobile application (when available). Contractor's staff assisting must be staff of the Contractor, not a third party including after hours.
- d. Customer Service shall be provided for all Participating Entities during the hours of 8:00 am to 5:00 pm, time zone to be per the Participating States/Entities time zone. After hours agents shall be available 24 x 7 x 365 and have access to all of the Participating States/Entities, Traveler information and be able to assist with and book travel. After hours staff must be part of Contractor, not a third party.
- e. Ensure travel options delivered under the agent assisted transaction fee are identical to those obtained by a Participating State/Entity via the online reservation system.
- f. Book preferred seating and other requests for the Traveler, per the Participating State's/Entity's travel policy. The Traveler's preferences are identified in his or her profile.
- g. Provide continuous low fare search through Global Distribution System (GDS) for both online and agent-assisted reservations.
- h. Include confirmation numbers and other pertinent reservation data on the Traveler's itinerary.
- i. Notify Travelers via email, phone or text message confirmation of any itinerary changes in flight, rail, or other travel schedules as soon as Contractor receives the information from the travel supplier, in no event longer than one hour from Contractor's receipt of the information. Any tickets, itineraries, and billings shall be modified or reissued to reflect changes, as necessary. Contractor will make adjustments for any airline schedule changes in travel, unless the airline makes the change at the airport due to a travel issue during travel.
- j. If a flight is sold out at the time of booking, the Traveler can be placed on a waitlist for that flight. If a seat becomes open the Travelers is placed on that flight. This applies

to non-discounted or lowest cost flights only. Communication to the Travelers via phone, mobile device or email from Contractor.

k. Investigate any service complaints received and provide a response within 48 hours to the Participating State/Entity or Purchasing Entity.

1.4 Lodging Services:

1.4.1 Have a system to manage hotel negotiations, add properties during the year, and conduct annual RFP's to offer NASPO ValuePoint members.

1.4.2 Ensure each hotel includes at a minimum these features and is posted on a separate page or pop up window for Travelers to review at the time of booking:

- Offer and have available GSA rates or lower for travelers
- Restaurant on-site or nearby
- Hotel Location
- Airport shuttle service If available and if there is a fee or free service.
- Continental or full breakfast included in the room rate
- Fitness Center
- Internet services, at no cost is preferred.
- Business center
- Meeting Rooms available
- No blackout dates
- Last room available
- Environmentally preferable

1.4.3 Additional information and Rates to include:

1.4.3.1 Rates and other hotel information

- GSA Per-diem information and rates showing in each booking tool as the first option for Travelers.
- Seasonal per-diem rates and period's (if applicable)
- Year round per-diem rates (if applicable)
- Flexible rates or discounted rates for local hotel/motel tax and last room availability.

1.4.3.2 Meeting Rooms:

- Number of meeting and conference rooms
- Total square footage of meeting rooms including how many seats can be in each room.
- Number of board rooms and square footage

- List if audio visual equipment available
- Are catering services available
- If wireless internet is available or not in the meeting rooms

1.4.3.3 Additional Information:

Assist in streamlining the payment process to each hotel. This includes using technology like virtual payment solutions, SMART Bill, and direct bill as needed.

1.5 Website:

1.5.1 Customized Website

Each Participating State/Entity will have a customized website including their travel policy, and any other needed information for travelers. This also include a single sign on from the Participating State's/Entity's network domain to an individual level.

1.6 Additional Services:

1.6.1 Services

- VPay Client CC: If requested by Traveler, virtual payment of hotel billing tied to Travelers credit card.
- VPay TMC CC: If requested by Traveler, virtual payment for hotel billing tied to Contractors credit card and billed back to them. (Limited to State of Ohio only)Trondent Pre-Trip: If the Participating Entity uses the booking tool Get There, this pre-tip feature can be turned on at the Participating State's/Entity's request.
- SMART Pre-Trip: Approval Process for off line bookings prior to booking
- SMART Bill: Hotel direct billed to Travelers credit card on file, non-virtual payment.
- Online Direct Connect: bookings done online with direct connect to airlines. Example: Southwest wanna get away fare.

1.6.2 Meeting and Conference Planning

- Assist Participating States/Entities or Purchasing Entities with group air bookings and assist in small meeting sourcing and hotel blocks.
- Offer the Event and Travel Management group as support to Participating State/Entities that need corporate services. Included are outsourced event engagements quoted per event and meeting service.

1.6.3 Automated Payment Management

Offer and support multiple expense tools to Participating States/Entities to choose from for expense management, with invoicing, expense reporting, and automated reimbursement included.

1.6.4 Mobile Technology

1.6.4.1 Mobile Device access

- a. Provide booking, and other relevant travel information via a mobile application examples include but are not limited to iPhone, android platforms. Other platforms or specific devices may be added by Participating States/Entities.
 - SMART technology is available in any mobile device without an application download.

1.7 Reports:

1.7.1 Unused Tickets

- a. At the time of ticketing ensure credits are used toward new reservations and if the Traveler is booking online their profile will prompt them a credit is available. Carrier fees may apply to the Participating Entity with using these tickets.
- b. Upon request name changes and refunds when possible.
- c. Process the necessary paperwork and refund an unused refundable ticket less the transaction fee when the ticket is submitted for a refund. All refunds are credited back to the original credit card or other payment means originally used to pay for the ticket.

1.7.2 Other Reports

- a. Provide any reports requested by the Participating State's/Entity's Participating Addendum. If the format is not requested. This could include upon Traveler request, Contractor shall provide customized or other reports, such as: Hotel Activity report, Air activity report, Executive summary report, Emissions report, and Fare savings report Reports can be run and delivered via email on a customized schedule

1.8 Implementation Plan and Transition:

1.8.1 Work with the Participating State/Entity to create an implantation plan that includes but is not limited to:

- A kick off meeting, setting milestones and timelines
- Service configuration
- Finance and accounting
- Technology

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- Infrastructure
- Travel management
- Trainings
- Online booking tools
- Testing, review and approval by Participating Entity
- Go live

- a. Update the implementation plan as needed and tasks are completed.
- b. Assign a contact for the Participating State/Entity to work with and have progress meetings when needed.
- c. Submit the implementation plan to the Participating State/Entity for review.
- d. Once the plan is approved by the Participating State/Entity, move forward with the plan including dates agreed upon.

1.8.2 Re-Implementation

Assist the Participating State/Entity in making changes to their travel program if needed. Work with the Participating State/Entity to create a re-implementation plan to accomplish the changes.

1.8.3 Transition

Work with each Participating State/Entity or Purchasing Entity to create a Transition plan. Develop a transition plan for ease of implementation of subsequent contractors should the need arise at the end of the Contract term. Transition plan must be updated quarterly and be available upon request. The transition plan shall be agreed upon between the Participating State/Entity and Contractor.

Knowledge Transfer: Contractor shall play an integral role in providing knowledgeable human resources during any transitional period to ensure uninterrupted operations and availability of the Information System. Consultations with Expert Personnel are required in addition to supplied documentation.

Documentation: Documentation shall be made available to assist in the execution of any transition plan upon Contract termination or expiration. Contractor is responsible for developing and maintaining documentation at all times during the contract period. All documentation shall be made available to the Participating Entity upon request.

1.9 Program Management:

1.9.1 Annual Review Meetings

- a. Meet with the Agreement Contract Administrator annually to go over program performance.

1.9.2 Account Representative

- a. Provide a dedicated account manager(s) to support each Participating State/Entity. The account manager will be responsible for implementation, setting up the online travel reservation system, website, providing access and comprehensive reporting, benchmarking, conduct reviews, creating travel program seminars and trainings resolving client services and reservation issues with Participating Entities including Traveler issues.

1.10 Duty of Care and Incident Reporting:

1.10.1 Duty of Care

- a. Identify Travelers who may be in a high risk location (security or natural disaster threat), have travel booked to a high risk location, or may be requesting travel to a high risk location.

- b. Use SMART systems to support duty of care through automated messaging and traveler tracking. Some of these services are include but no limited to:

- Global risk analysis, including pre-trip, while away, and post trip analysis.
- Traveler tracking and automated warnings and alerts
- Travel and risk policy development
- Designation-based training strategy
- IT Security and compliance testing
- Mobile messaging and connectivity
- Accommodation of Travelers special needs
- In-house 24/7 agent services
- Business continuity planning and testing
- Integration with third-party extraction providers

1.11 Training:

- a. Offer webinar, online, on-site, video, user guide and phone training to Participating State's/Entity's at its request. These trainings must highlight step-by step-on how to make a reservation from start to finish, highlight features and benefits of the booking tool and any other components the Participating State/Entity has requested.
- b. In addition to delivered reports, designated NASPO ValuePoint or Lead State site administrators will receive training on iBank or other reporting tools so they can retrieve travel spend data whenever the need arises. All iBank or other reporting tool reports can be formatted in PDF format, Excel, Rich Text, Word, as requested by the Traveler.

1.12 Emergency and Disaster Recovery:

- 1.12.1 Have multiple locations with back up servers, if one office is down another is able to assist and customers won't see an interruption in services or access to their booking tool and profile.

- 1.12.2 In the event a disaster or failure happens work and communicate with the Participating State/Entity, traveler(s) and the Contract Administrator.

1.12.3 Deliver to DAS a copy of its Emergency and Disaster Recovery Plan and a copy of the Emergency and Disaster Recovery Plan for the Booking Tool, if separate, ensuring that all critical business needs are met in the event of an emergency or disaster and addressing the following:

- Data facilities that exceed natural disaster code – including earthquakes and tornados
- Fully redundant system, including: server build outs, intelligent load balancing, and excess capacity configurations to ensure that failure of a single component does not disrupt the entire environment and ensures communications integrity, in the event one or multiple offices are taken off line
- Redundant power, emergency systems, fire detection
- Back up and restoration procedures for full recovery of the production environment – automated disk to disk and duplication of local disk array to a remote data center
- Staffing plans
- Communication plans
- Mandatory recovery procedure review

Contractor shall maintain and update its Emergency and Disaster Recovery Plan as necessary. Contractor shall deliver copies of any updated or revised plans to DAS.

EXHIBIT B – FORM PARTICIPATING ADDENDUM

PARTICIPATING ADDENDUM FOR
THE STATE OF (XXXX)

NASPO ValuePoint
PARTICIPATING ADDENDUM
TRAVEL MANAGEMENT SERVICES
Lead by the State of Oregon



Master Agreement #: XXXXXX

Contractor: **CORPORATE TRAVEL MANAGEMENT NORTH AMERICA, INC.**

Participating Entity: **STATE OF XXXXX**

The following products or services are included in this Addendum:

- Removable Example: All accessories listed on the Contractor page of the NASPO ValuePoint website.

The following products or services are not included in this Addendum:

- Removable Example: Installation services.

MASTER AGREEMENT TERMS AND CONDITIONS:

1. Scope: This Addendum covers the Travel Management Services led by the State of Oregon for use by state agencies and other entities located in the Participating State [or State Entity] authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

Removable Instruction: Participating States should ensure that paragraph 2 properly defines the scope of participation. The model language in paragraph enables participation by all political subdivisions, institutions of higher education, and other entities included in the state's statewide contract program.

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

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

DASPS-7540-17- Travel Management Services

Exhibit A: RATES

SERVICE PER TRANSACTION: VENDOR FEE:

Full service agent service: \$20.00

Online transaction:

 Concur: \$5.00

 NuTravel: \$6.00

 Get There: \$4.00

 Lightning: \$4.00

After Hours Fee: No Charge

Hotel only booking via Agent: \$6.00

Hotel only booking via online: Online booking fee

Car Rental Booking via agent: \$6.00

Car Rental Booking via online: Online booking fee

Hotel and Car only booking via agent \$6.00

Hotel and Car only via online: Online booking fee

Optional Additional Service(s) and Fees: Vendor Fee:

Online Direct Connect: \$6.00

Vpay Client CC \$6.00

VPay TMC CC \$10.00 (Limited to State of Ohio only)

Trondent Pre-Trip \$1.00

Smart No Charge

Smart Pre-trip (online only) \$6.00

Smart Bill No Charge

Any and all taxes that may be applicable under federal or state government regulations from time to time shall be additional to the above rates.

Contractor

Name:	Corporate Travel Management North America, Inc.
Address:	
Telephone:	
Fax:	
Email:	

Participating Entity

Name:	
Address:	
Telephone:	
Fax:	
Email:	

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

[Removable Instruction: Insert text here to address specific changes to the terms and conditions. Indicate which section numbers of the Master Agreement are modified. If no changes are required, check the box above and delete this paragraph.]

5. **"Reserved"**.

6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of [xxxxxxx], as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. **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.

8. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required

The following changes are modifying or supplementing the Master Agreement terms and conditions.

9. Lease Agreements: ***“Reserved”***.

10. Subcontractors: All contactors, dealers, and resellers authorized in the State of Oregon, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor’s dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

11. Contracts or Requests for Service: Any Contract or Request for Service issued by an Authorized Purchaser 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 Contract or Request for Service agree in writing that another contract or agreement applies to such Contract or Request for Service.

(remainder of this page is intentionally blank)

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

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

Participating Entity:	Contractor: Corporate Travel Management North America, Inc.
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	
Telephone:	
Email:	

***[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in
appropriate data bases.]***

EXHIBIT C - INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Agreement, and shall maintain it in full force and at its own expense throughout the duration of this Agreement and any Contract issued hereunder, and as required by any extended reporting period or tail 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. Coverage must be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

1. INSURANCE REQUIRED. Contractor shall obtain and maintain the following:

1.1 Workers' Compensation & Employers' Liability. All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Agreement and any Contract issued hereunder, including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

1.2 Commercial General Liability covering premises operations, independent contractors, completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate

Coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability. Coverage must extend to business associates and independent contractors providing professional services on behalf of or at the direction of Contractor. A primary policy or combination of a primary policy and excess policy shall be acceptable in order to meet the limits requirement.

1.3 Automobile Liability Insurance. Contractor shall provide Automobile Liability Insurance covering 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.

2. ADDITIONAL INSURED. The Professional Liability insurance and Commercial General Liability insurance and Automobile Liability insurance required under this Agreement must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Agreement.

3. TAIL COVERAGE. If any of the required insurance is on a claims-made basis and does not include an extended reporting period of at least twenty-four (24) months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided

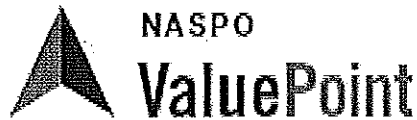
the effective date of the continuous claims made coverage is on or before the Effective Date of this Agreement, for a minimum of twenty-four (24) months following the later of (i) Contractor's completion and Purchasing Entity's acceptance of all Services required under this Agreement or any participating addendum issued hereunder, or, (ii) the expiration of all Warranty Periods provided under this Agreement.

4. CERTIFICATE(S) AND PROOF OF INSURANCE. Contractor shall provide to DAS Certificate(s) of Insurance for all required insurance before delivering any goods and or performing any Services required under this Agreement. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that Contractor will pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall will be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least twenty-four (24) months is provided on all claims made policies or that tail coverage is provided. As proof of insurance, DAS has the right to request copies of insurance policies relating to the insurance requirements in this Agreement or any Participating addendum issued hereunder.

5. NOTICE OF CHANGE OR CANCELLATION. Contractor or its insurer must provide at least thirty (30) Days' written notice to DAS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

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

EXHIBIT D -NASPO TERMS AND CONDITIONS



NASPO Master Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Request for Services or Contract placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Request for Service or Contract issued against the Master Agreement, including the terms on any Account;
- (4) The Scope of Services.

b. 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. Contractor 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 this Master Agreement as an Exhibit or Attachment.

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product or service.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications which permanently reside on a computing device.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter

amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Request for Services or Contract means any customer initiated transactions, whether in person, by phone or other electronic means used by a Purchasing Entity to order the Products or services.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation, or other deliverable supplied by the Contractor pursuant to this Master Agreement. Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues an Request for Service or Contract against the Master Agreement and becomes financially committed to the purchase.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for Three (3) years. This Master Agreement may be extended beyond the original contract period for additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six

months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products or perform services under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United

States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell services. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide

the following NASPO ValuePoint reports.

- a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Request for Service or Contract identifier/number(s); (5) Request for Service or Contract Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Request for Service or Contract date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement.
- c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.
- d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

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a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

9. NASPO ValuePoint eMarket Center

In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provided customers information regarding the Contractors website and ordering information.

At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least (Enter the Number of Days) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be

allowed.

12. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

13. Administration of Request for Service or Contract

A. May be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

b. All communications concerning administration of Request for Service or Contract placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

c. Request for Service or Contract must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

d. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Account Set Up Process:

Participating State will work with Contractor for account set up specific to each state.

15. Laws and Regulations

Any and all services performed and Products offered shall comply fully with all applicable Federal and State laws and regulations.

16. Inspection and Acceptance.

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection

and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products and services are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Solutions that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements.

d. The warranty period, if any, shall begin upon Acceptance.

17. Payment

Where not otherwise addressed in the Contract documents, payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable,

license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

General Provisions

20. Insurance

a. Insurance requirements for the State of Oregon are specified in Exhibit C. Otherwise, unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides for written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all

required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Request for Service or Contract.

21. Records Administration and Audit.

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product or performing services under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals (including credit card information), is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is

rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

23. Public Information.

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

24. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate

responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

25. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

26. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

27. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products or services delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

28. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

29. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

(1) Nonperformance of contractual requirements; or

- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless other specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Request for Service or Contract, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

30. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce

any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Request for Service or Contract, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Request for Service or Contract shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Request for Service or Contract.

31. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

32. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or service, or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or
- (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Product in combination with such

product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

33. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Request for Service or Contract issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

34. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

35. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

36. Contract Provisions for Orders Utilizing Federal Funds.

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, 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. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

37. System Failure or Damage

In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assisted in restoring the system to operational capacity

