

PARTICIPATING ADDENDUM AMENDMENT #02
NASPO ValuePoint
Managed Print Services
Administered by the State of New Mexico (hereinafter "Lead State")

MASTER AGREEMENT
Pacific Office Automation
Master Agreement No: 40-000-14-000107AC
(hereinafter "Contractor")

And

New Mexico
(hereinafter "Participating State/Entity")

Page 1 of 2

THIS AGREEMENT is made and entered into by and between the **State of New Mexico, General Services Department, State Purchasing Division**, hereinafter referred to as the "Procuring Agency" and **Pacific Office Automation** hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

3. Terms: This Participating Addendum will be extended from April 15, 2018 through December 31, 2019, unless extended, renewed or terminated earlier. In no case will the Participating Addendum, including all renewals thereof, exceed a total of four (4) years in duration.

All other articles of the original contract remain the same.

Participating State: State of New Mexico	Contractor: Pacific Office Automation
By: 	By: 
Name: Lawrence Maxwell	Name: Doug Pitassi
Title: State Purchasing Agent/Chief Procurement Official	Title: President
Date: <u>3/26/18</u>	Date: 3/19/2018

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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

**PARTICIPATING ADDENDUM AMENDMENT #01
 NASPO ValuePoint
 Managed Print Services
 Administered by the State of New Mexico (hereinafter "Lead State")**

**MASTER AGREEMENT
 Pacific Office Automation
 Master Agreement No: 40-000-14-000107 AC
 (hereinafter "Contractor")**

And

**New Mexico
 (hereinafter "Participating State/Entity")**

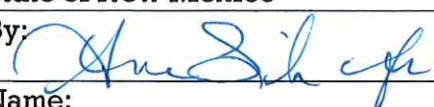

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THIS AGREEMENT is made and entered into by and between the **State of New Mexico, General Services Department, State Purchasing Division**, hereinafter referred to as the "**Procuring Agency**" and **Pacific Office Automation**, hereinafter referred to as the "**Contractor**".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

3. Terms: This Participating Addendum will be extended from April 15, 2017 through April 14, 2018, unless extended, renewed or terminated earlier. In no case will the Participating Addendum, including all renewals thereof, exceed a total of four (4) years in duration.

All other articles of the original contract remain the same.

Participating State: State of New Mexico	Contractor: Pacific Office Automation
By: 	By: 
Name: Lawrence Maxwell	Name: Doug Pitassi
Title: State Purchasing Agent/Chief Procurement Official	Title: President
Date: 9/4/17	Date: 3/17/17

PARTICIPATING ADDENDUM AMENDMENT #01
NASPO ValuePoint
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NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

NASPO ValuePoint
Master Agreement Amendment #01
Managed Print Services
40-000-14-000107 AC



THIS Agreement (“Agreement” or “Contract”) is entered into by and between the **State of New Mexico, General Services Department, State Purchasing Division**, hereinafter referred to as the “Lead State” or a “Procuring Entity” and **Pacific Office Automation**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties.”

3. Term of the Master Agreement

This Master Agreement will be extended from April 15, 2017 through April 14, 2018, unless extended, renewed or terminated earlier at the Lead State’s discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. In no case will the Participating Addendum, including all renewals thereof, exceed a total of four (4) years in duration.

All other articles of the original Master Agreement remain the same.

IN WITNESS WHEREOF, the parties have executed this Master Agreement as of the date of the signature by the required approval authorities below.

STATE OF NEW MEXICO

Pacific Office Automation
(Contractor)



Signature

Signature

BY: Lawrence Maxwell

BY: Doug Pitassi 

TITLE: State Purchasing Agent

TITLE: President

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

NEW MEXICO TAXATION & REVENUE DEPARTMENT

CRS ID Number: 03-111871-00-2

BY: *Russ Alvarado*

DATE: 4.4.17

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

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1. **Scope:** This addendum covers the *Managed Print Services* led by the State of New Mexico for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize state/entity contracts with the prior approval of the state's chief procurement official.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state/entity contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Terms:** This Participating Addendum shall neither be effective nor binding until approved by the State Purchasing Agent. This Agreement shall terminate in one (1) year, unless extended, renewed or terminated earlier. In no case will the participating addendum, including all renewals thereof, exceed a total of four (4) years in duration.
4. **Restrictions:**
 - a. Leasing, renting or purchasing equipment is not allowed throughout the term of this contract.
 - b. Professional Services
5. **Participating State Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

[New Mexico's Terms and Conditions directly from the RFP]

A. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the agency and are not employees of the State of New Mexico. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation,

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self-employment tax and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

B. Non-Collusion

In signing the Master Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

C. Release

The Contractor, upon final payment of the amount due under this Master Agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Master Agreement. The Contractor agrees not to purport to bind the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

D. New Mexico Employees Health Coverage

If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

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Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information
<http://www.insurenemexico.state.nm.us/>.

For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

E. Pay Equity Reporting Requirements

- (1) If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.
- (2) For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- (3) Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- (4) Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that,

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should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

F. New Mexico Administration Reporting and Fees

The Contractor agrees to provide a utilization report on all sales and/or services and other revenues (including commissions charged) and fees to the agreement administrator in accordance with the following schedule:

<u>Quarter</u>	<u>Period End</u>	<u>Report Date</u>
First	July 1 – September 30	October 31
Second	October 1 – December 31	January 31
Third	January 1 – March 31	April 30
Fourth	April 1 – June 30	July 31

The periodic report shall include the gross total sales and other revenues (including commissions charged) for the period subtotaled by procuring agency or local public body name. Please note that the SPD is interested in the distinction between sales to state agencies and those to local public bodies (such as cities and counties) to evaluate to whom SPD contracts are most beneficial. Such information will aid in strategically sourcing future procurements to ensure SPD is meeting the needs of its customers.

The reports shall be accompanied with a check payable to the State Purchasing Division for an amount equal to one percent (1.00%) of the total sales and other revenues derived from New Mexico state agencies and local public bodies (including commissions charged) for the period. This fee is in addition to the fee specified in the NASPO ValuePoint Master Agreement Terms and Conditions that is based on all sales under the Master Agreement.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of this Agreement or termination of this Agreement for cause.

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G. Workers Compensation

The contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the agency.

6. **Lease Agreements:** Leasing, renting or purchasing equipment is not allowed throughout the term of this contract.
7. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Jeff Simon
Address	14747 NW Greenbrier Parkway Beaverton, OR 97006
Telephone	503-601-2315
Fax	503-526-0341
E-mail	jsimon@pacificoffice.com

Participating Entity

Name	Teri Arevalo
Address	1100 St. Francis Drive, Room 2016, Santa Fe, NM 87505
Telephone	(505) 827-0266
Fax	(505) 827-2484
E-mail	teri.arevalo@state.nm.us

8. **Subcontractors:** Subcontractor are not allowed throughout the term of this contract.
9. **Dealers and Resellers:** Pacific Office Automation's authorized dealers and resellers may be authorized in the State of New Mexico to provide sales and service support to participants in New Mexico's Participating Addendum and as shown on the dedicated

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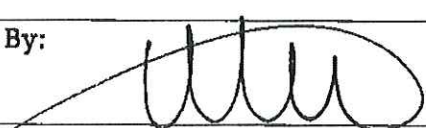
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Pacific Office Automation's (NAPSO) website. Pacific Office Automation must receive approval, in writing from New Mexico's State Purchasing Agent/Chief Procurement Official, before any dealer or reseller is used during the term of this agreement. In addition, Pacific Office Automation dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement and this Participating Addendum. Pacific Office Automation is solely responsible for fulfillment of all requirements of the Master Agreement and this Participating Addendum.

10. 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.

8.11. Contract Review: All Awarded Offerors under the awarded Master Agreement shall meet annually with the Lead State and Sourcing Team to review and discuss any service concerns, industry trends, and effectiveness of the Master Agreement. The annual review will take place prior to the contract extensions.

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

Participating State: New Mexico	Contractor: Pacific Office Automation
By: 	By: 
Name: Lawrence Maxwell	Name: Doug Pitassi
Title: State Purchasing Agent	Title: President
Date:	Date: 3/9/2016

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NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org or

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

NASPO ValuePoint Master Agreement Terms and Conditions
Managed Print Services
40-000-14-00107AC



THIS Agreement (“Agreement” or “Contract”) is entered into by and between the **State of New Mexico, General Services Department, State Purchasing Division**, hereinafter referred to as the “Lead State” or a “Procuring Entity” and **Pacific Office Automation**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties.”

1. Master Agreement Order of Precedence

a. Any Order 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 Purchase Order issued against the Master Agreement;
- (4) The Statement of Work;
- (5) The Solicitation; and
- (6) Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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 means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

Acceptance Testing means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

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 of 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 and the District of Columbia. 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.

Order or Purchase Order means any purchase order, sales order, contract, or other document used by a Purchasing Entity to order the Products.

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 later participate in the Master Agreement

Product means any equipment, software (including embedded software), documentation, service

or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state, 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 a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

3. Term of the Master Agreement

The initial term of this Master Agreement is for one (1) years. This Master Agreement may be extended beyond the original contract period for three (3) additional one (1) year at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

4. Amendments

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

5. 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.

6. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the entire term of the Master Agreement.

7. 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 delivered and accepted, and rights attending any warranty or default in performance in association with any Order. Cancellation of the Master Agreement due to Contractor default may be immediate.

8. 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 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, 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.

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. 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.

10. 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 otherwise 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 a Purchase Order, 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.

11. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Offeror. If damage does occur, it is the responsibility of the Offeror to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Ordering Entity's Purchase Order number.

12. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, 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.

13. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is 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.

14. 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 claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to 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 its use, infringes Intellectual Property rights ("Intellectual Property Claim").

(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.

15. 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.

16. 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.

17. Insurance

a. 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 Best's 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, with no deductible for each of the following categories:

(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. Such policies shall also reference

this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

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 that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, 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, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at 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 Purchase Order.

18. Laws and Regulations

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

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, 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 license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own

expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

20. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order 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 State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating 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.

21. Ordering

- a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- b. The resulting Master Agreements permit Purchasing Entities to define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document compliance with the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - (1) The services or supplies being delivered;
 - (2) The place and requested time of delivery;
 - (3) A billing address;

- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders 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.

h. Orders 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.

i. Notwithstanding the expiration 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 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.

22. Participants

a. Contractor may not deliver Products 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 (e.g. purchase order or contract) 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 States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating 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@wsca-naspo.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. State Participating Addenda or other Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor

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.

23. Payment

Payment for completion of a contract order 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. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

24. Public Information

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

25. 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, 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.

26. 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 26a 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.

27. 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 Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order 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. The format for the detailed sales data report is shown in Section Attachment D.

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.

28. Standard of Performance and Acceptance

Any standard of performance under this Master Agreement applies to all Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall

pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the standard of performance is met. The warranty period will begin upon Acceptance.

29. Warranty

The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

30. 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 assist in restoring the system to operational capacity.

31. 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.

32. 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 Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order 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 Purchase Order.

33. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity 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 to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

34. 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.

35. 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 (in most cases also the 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; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

36. 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 provide 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.

37. 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.

38. Liability

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

Solicitation Requirements

1. Restrictions

Leasing, renting or purchasing equipment is not allowed throughout the term of this contract. Awarded Offeror may place equipment and will cover their cost of the equipment through the monthly click charge and the MPS service through the MPS Base Monthly Charge. The Participating Entity will be able to use the equipment during the MPS engagement but will not

own, lease or rent the equipment. The Awarded Offeror will remove the placed equipment at the end of the MPS engagement.

If Awarded Offerors misuse their awarded contract, they may have their contract suspended and/or terminated.

2. Definitions for the Scope of Work

The following definitions apply to this solicitation. Two separate definitions are contained within this Agreement, those definitions of terms used in this solicitation and the NASPO ValuePoint Master Agreement Terms and Conditions. Only those definitions from the RFP that apply to the Scope of Work are incorporated herein.

“Assessment” means evaluation of all costs and workflow processes in a current print environment and proposal for process improvement and reducing overall cost. The Awarded Offeror will use the current (leased or owned) equipment in their print reduction plan. The Awarded Offeror will not charge the Participating Entity for the leased equipment.

“Business Hours” means 8:00 AM thru 5:00 PM Monday through Friday.

“Blended Environment” means a procuring agency’s output device environment may have multiple brand/manufacture devices within their location(s).

“Change Management” means a structured approach to facilitate planned changes to transition individuals and organizations to a desired future state which will improve workflow efficiency and cost savings.

“Click Charges” means charges associated with maintenance and support, actual print/copies made, and supplies (excluding staples and paper). If the equipment is owned and not under another maintenance agreement, the Click Charge should be less than the Click Charge on the MPS engagement where equipment has been placed by the Awarded Offeror. Maintenance and support will end the same time the MPS engagement ends.

“Content Document Management (CDM) services and Workflow Process (WFP)” means a service that utilizes software for smart multifunction products (MPFs) that automate paper intensive document workflows and route scanned pages to document management systems. CDM and WFP can be extended to include restructuring of document workflows, improve document security or to reduce print volumes and power consumption for environmental reasons.

“Document Capture” is the integration of paper documents into your digital workflows by using technology to analyze information from scanned documents and route them accordingly.

“Document management system (DMS)” means a computer system (or set of computer programs) used to track and store electronic documents. It is usually also capable of keeping

track of the different versions modified by different users (history tracking).

“Early Termination Fee” means a charge levied when an agency wants to cancel an existing contract.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“Implementation” means the execution of all the processes involved in acquiring new software and hardware operating properly including installation, configuration, running, testing and making necessary changes.

“Initial Training” means the training for new users and administrative personnel related to devices and software and equipment that include device features, applications, how to use, benefits, FAQs, on line and help desk information, supply requirements and installation, problem solving easy to correct errors.

“IT” means Information Technology.

“Maintenance and Support” means those preventive, diagnostic, updating replacement and repairs that occur to the placed equipment in order to keep the equipment at optimal performance and eliminate downtime. Maintenance and support will end the same time the MPS engagement ends.

“Monthly Base Service” shall include consulting & project management; assessments; monitor and manage procuring agency’s fleet; SLA, reporting and invoicing; software; implementation; training; change management plan; content document management and workflow process; security services; and helpdesk/customer service.

“On-going Training” means training for upgrades, enhancements, or changes to devices and software and equipment that include device features, applications, how to use, benefits, FAQs, on line and help desk information, supply requirements and installation, problem solving easy to correct errors.

“Owned Equipment” The Awarded Offeror may charge for the owned equipment if the owned equipment is not under another maintenance agreement. The charge through the Click Charges would include maintenance and support. If the equipment is owned, the click charge should be less than the click charge on the MPS placed equipment. The Awarded Offeror may charge for MPS Base Monthly Service identified within the RFP for owned equipment not under another maintenance agreement.

“Placed Equipment” means the equipment placed at the Participating Entities premise by the Awarded Offeror. The placed equipment will be used during the MPS engagement but will not be owned, leased or rented by the Participating Entity. At the end of the MPS engagement, the Awarded Offeror will remove the placed equipment, at no additional cost to the Participating

Entities.

“Project” means a temporary process undertaken to solve a well-defined scope or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project is complete the project scope is achieved and project acceptance is given by the project executive sponsor, Procuring Agency or designee.

“Pull Printing” means a printing feature where a user's print job is held on a server and released by the user at any printing device which supports this feature.

“Software” means the entire set of programs, procedures, and routines associated with the operations of a system, including the operating system.

“Subcontractors” means a third party, not directly employed by the Awarded Offeror, who will provide services identified in this RFP. Awarded Offeror's authorized subcontractors must be certified by the Awarded Offeror to offer and perform MPS. This term encompasses “Value Added Resellers (VARs), Distributors, Local Dealers, Partner, Franchise, etc.”

3. Scope of Work

As defined by Gartner, Managed Print Services (MPS) is a generic Gartner term for a service offered by an external provider to optimize or manage a company's document output to meet certain objectives, such as driving down costs, improving efficiency and productivity, or reducing the IT support workload. Under MPS, a service provider takes primary responsibility for meeting the customer's office printing needs, including the printing equipment, supplies, services, and the overall management of the printer fleet.

During the term of this contract, Awarded Offeror may request to add new technology for MPS within the original scope of work. Any new technology must be approved by the Lead State Contract Administrator.

Offeror must be able to provide all services listed below to be considered responsive.

1. consulting and project management;
2. assessments;
3. monitor and manage Procuring Agency's fleet,
4. service level agreement, reporting and invoicing;
5. software;
6. implementation;
7. training;
8. change management plan;
9. helpdesk/customer service;

The Procuring Agencies will have the option to select which MPS components will be included in their MPS engagement.

Offerors Instructions

Offerors shall respond in the form of a **detailed narrative** describing how your company meets or exceeds each specification, unless otherwise instructed. Marketing materials, links and statement of concurrence will not be accepted as a response to the requirements and may be rejected.

All services below are considered general MPS services and will be included in the base price as selected by the procuring agency's individual MPS engagement.

1. Consulting and Project Management

Consulting and project management services are considered services that help organizations improve their print performance, development of plans and schedules for improvement, change management, technology implementation, and strategy development.

2. Assessments

Offerors shall provide two (2) actual samples of varying sizes for public customer's assessment and describe how they were implemented.

2.1. Initial Assessment

Offerors must provide, at a minimum, an initial no cost assessment. An Initial Assessment does not guarantee an Awarded Contractor a Procuring Agency contract. An Initial Assessment shall include a review of the current print environment providing recommendations for a rationalized print environment and provide an estimate of potential future savings. This no cost assessment may occur as a part of a Vendor's proposal to offer Managed Print Services, or may occur after contract award.

The initial assessment must contain the minimum requirements listed below must identify all software and all associated costs proposed:

- a. Document Workflow Assessment;
- b. Procuring Agency's future needs versus current practices;
- c. Identify cost of services, supplies and parts for fleet (exclude paper and staples);
- d. Identify current equipment output and Total Cost of Ownership including phone line charges for fax functionality, toner purchases, time and material calls, service agreements;
- e. Identifying user-to-device ratio with right device, right location and right functions;
- f. Preliminary estimated cost savings and efficiencies;
- g. Employee productivity improvements;
- h. Environment impact analysis;
- i. Documented security assessment;

3. Monitor and Manage Procuring Agency's Fleet

Offerors must describe how they will monitor and manage print devices to include:

- a. Network access

- b. Fleet configuration and utilization
- c. Multi-vendor Support and Maintenance: Management of legacy owned devices including parts, labor and supplies, installing, moving, and changing;
- d. Removing and disposing of devices, including recycling programs;
- e. Remote monitoring and management of all print devices for use in the management and reporting of consumable spend, break/fix, technical support and the improvements of efficiencies for supplies and/or cost reductions. Monitoring fleet performance and cost saving opportunities. Include how your organization performs meter collection for those devices that are not networked.
- f. Continual optimization of print output environment, regardless of printer brand, business process reviews to ensure that the procuring agency's objectives are being met.
- g. Innovative ways your organization helps eliminate unnecessary printing; reduce carbon footprint usage, waste, or "green spend", etc.
- h. On-going Assessment: Offerors must provide a regular On-going Assessment to evaluate the procuring agency's identified objectives outlined in the initial assessment. The On-going Assessment shall include but not limited to continuous process improvement, and business reviews such as; device utilization, fleet performance, cost saving opportunities, department/site usage, green spend, consumables monitoring report, remote management, service level agreement monitoring and etc. The frequency of the On-going Assessment will be either on a quarterly or semi-annual basis and will be identified in the Participating Addendums.

4. Service level agreements, reporting and invoicing

At a minimum, the following reports will be required:

- a. ensure SLA compliance and support;
- b. device performance;
- c. device inventory detail;
- d. helpdesk call-log detail;
- e. incident detail per device;
- f. meter volume metric;
- g. consumable spend and detail;
- h. line item billing detail;
- i. total output of each device

Additional reporting maybe required and addressed at the Procuring Agency level.

Offerors are to clearly define their different billing reports available for Procuring Agencies.

5. Software

Offerors must list and describe all software required to perform MPS. At a minimum describe:

- a. Device management software to monitor and manage the print devices in an environment on-site and remotely;
- b. Discovery and design software to analyze and plan for the change required in implementing MPS;

- c. Security Services; Offerors must describe how its technologies will guarantee security solutions such as; intrusion detection, device security integration, user authentication, secure document release, document privacy, securing data, protecting content integrity, job tracking (document in transit and at rest), printed documents, network security, security compliance and audit services including cloud access.
- d. Offerors must also describe their device hard drive security procedures as defined in US Department of Defense (DoD) 5220.22-M.

6. Implementation

Offeror's narrative shall describe in detail what is included in their typical implementation plan and show how their analysis, assessment, and planning come together for delivery of recommended solution to meet the Procuring Agency's goals.

7. Training

Offerors must describe their approach to ensure Procuring Agency's employees are well-trained to maximize the managed print solutions. Offerors training plan shall describe course materials and types of training available (targeted, web based, on-site, one-on-one, etc.) for both Initial and On-Going training.

8. Change Management Plan

Offerors must describe in detail all aspects of their change management plan.

9. Helpdesk/Customer Service

Offeror must describe in detail the process used to ensure adequate service representatives will be available during the Procuring Agency's regular business hours.

Offeror must describe procedures for addressing and resolving customer problems, complaints, and issues. The narrative should include expected response time after initial contact to the help desk, timelines and escalation measures to resolution.

Value Added Services

Value added section are desirables and will not be evaluated and will not be assigned points. If Participating States or Procuring Agencies choose to add these services, the Awarded Offeror will be held to any costs proposed for that value added service.

Offeror should describe any value added services such as but not limited to:

- onsite print center, including staffing;
- options for on-site full-time and/or part-time staff for MPS;
- customized reports;
- other recycling programs;
- print management software to manage the volume and nature of print and authenticate the users;
- scan routing software to route scans to various destinations including fax servers, network folders and email;
- mobile device printing software;

- provide an overview of additional software that is utilized in your MPS offering if different than above items;
- rules based software;
- job based accounting software;
- content Document Management and Workflow Process;
- pull printing.

Solicitation Cost (costs from 2nd clarification) will be inserted here.

MPS Service Costs

This modified cost structure is not an opportunity for Offerors to change or add to Offeror's non-cost (technical) proposals.

All service components must have a price associated. If Offerors are not charging for the service component(s), Offerors must insert a \$0 in the appropriate box. Offerors must not change or alter the cost tables. If changes to the tables or to the price structure are made, Offerors will be deemed non-responsive. In addition, Offerors shall not incorporate any additional terms and conditions as footnotes to their pricing, as they will be deemed non-responsive.

MPS Base Monthly Service Components	Per Unit
On-going Monitoring, Managing and Assessing Procuring Agency's Fleet	<u>\$0.00</u>
Single Software price must include the following: <ul style="list-style-type: none"> • Device management software • Discovery and design software • Security Services software • Hard drive security software 	<u>\$26.50</u>
Change Management Plan	<u>\$0.00</u>
Helpdesk/Customer Service	<u>\$0.00</u>

Initial MPS Services*	Cost
Consulting and Project Management	\$ <u>0.00</u> per hour
Implementation	\$ <u>0.00</u> per unit

*Initial MPS service costs and payment schedules must be identified and mutually agreed upon at the time of engagement.

Note: Initial Assessment, SLA, Reporting, Invoicing, and Training shall be part of the standard MPS service; customized reporting may be offered as Value Added Services.

Click Charges

Offerors must be mindful of information modified in Amendment #04, listed below in red font. As instructed, Offerors must submit their maximum click charge for each device type and page per minute (0 – 151+) listed in the table below. If Offerors cannot provide pricing for all device types and page per minute ranges, Offerors will be deemed non-responsive.

Awarded Offeror may place equipment and will cover their cost of the equipment through the monthly click charge and the MPS service through the MPS Base Monthly Charge. The Participating Entity will be able to use the equipment during the MPS engagement but will not own, lease or rent the equipment. The Awarded Offeror will remove the placed equipment at the end of the MPS engagement.

“Click Charges” means charges associated with maintenance and support, actual print/copies made, and supplies (excluding staples and paper). If the equipment is owned and not under another maintenance agreement, the Click Charge should be less than the Click Charge on the MPS engagement where equipment has been placed by the Awarded Offeror. Maintenance and support will end the same time the MPS engagement ends.

“Placed Equipment” means the equipment placed at the Participating Entities premise by the Awarded Offeror. The placed equipment will be used during the MPS engagement but will not be owned, leased or rented by the Participating Entity. At the end of the MPS engagement, the Awarded Offeror will remove the placed equipment, at no additional cost to the Participating Entities.

Click Charges Cost Form						
Device Type	Pages per minute					
	0 - 30	31 - 60	61 - 90	91 -120	121 - 150	151+
Single Function Mono	\$.028	\$.023	\$.015	\$.022	\$.022	\$.01995
Single Function Color	\$.09	\$.075	\$.054	\$.045	\$.05	\$.038
Multi-Function Mono	\$.051	\$.031	\$.025	\$.022	\$.022	\$.01995
Multi-Function Color	\$.065	\$.049	\$.054	\$.045	\$.045	\$.038

Prices quoted above must be Original Equipment Manufacturer (OEM) supplies. Procuring agency may choose to use compatible supplies at a lower cost.

3. Value Added Service*

Offerors may provide costs for Value Added Services listed below and/or list additional Value Added Services with associated costs as illustrated in chart below.

Value Added Services Cost Form

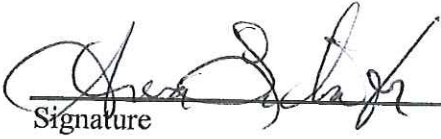
Value Added Service	Cost	Per Unit
Onsite print center, including staffing	\$3,500 per month	1- Full Time staff
Introduction of new technology as it becomes available for MPS	\$	
Options for on-site full-time and/or part-time staff	\$18-\$25 per hour depending on needs	1- Hourly
Additional software or licensing components of any services not provided within the base service such as mobile device printing	\$45	Maximum per month per device or user depending on the solution
Customized reports	\$No Additional Cost	
Other recycling programs	\$Recycling Programs are included at no cost by specific manufacturers	
After hour rate for MPS	\$145 per hour	
List additional Value Added Services below		
	\$	
	\$	
	\$	

* Value added section are desirables and will not be evaluated and will not be assigned points. If the State chooses to add these services, the Vendor will be held to any costs stated.

IN WITNESS WHEREOF, the parties have executed this Master Agreement as of the date of the signature by the required approval authorities below.

STATE OF NEW MEXICO

Pacific Office Automation
(Contractor)



Signature

Signature

BY: Lawrence Maxwell

BY: Doug Pitassi 

TITLE: State Purchasing Agent

TITLE: President

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

TAXATION & REVENUE DEPARTMENT

CRS ID Number: 03-111871-00-2

BY: 

DATE: 2/3/2016 3/15/16