

Master Agreement #: AR2493

VMware Agreement #00322245

Contractor: **VMWARE, INC.**

Participating Entity: **STATE OF NEVADA**

### **Participating Addendum Terms and Conditions:**

This Participating Addendum for the above referenced Master Agreement (“Participating Addendum”) is entered into between the State of Nevada acting by and through the Department of Administration, Purchasing Division (“DOA”) and VMware, Inc., a Delaware Corporation.

#### **1. Scope:**

This Participating Addendum covers Cloud Solutions led by the State of Utah for use by state agencies, the university and community college system, the Legislative Counsel Bureau, and political subdivisions (including cities, counties, and school districts) located in the State of Nevada authorized by Nevada statute to utilize State contracts with the prior approval of the Administrator for the Department of Administration Purchasing Division.

#### **2. Participation:**

This Participating Addendum under the NASPO ValuePoint Master Agreement may be used by all state agencies, the university and community college system, the Legislative Counsel Bureau, political subdivisions, and other entities authorized to use statewide contracts in the State of Nevada. Issues of interpretation and eligibility for participation are solely within the authority of the Administrator for the Department of Administration Purchasing Division.

#### **3. Access to Cloud Solutions Services Requires State CIO Approval:**

Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer’s Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.

#### **4. Primary Contacts:**

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



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Contractor

Name:	Karin Whitwood
Address:	12100 Sunset Hills Road, Suite 600
Telephone:	571-375-3481
Email:	<a href="mailto:NASPO-VP@vmware.com">NASPO-VP@vmware.com</a>

Participating Entity

Name:	Gideon Davis, Purchasing Officer
Address:	515 E. Musser St. Ste. 300, Carson City, NV 89701
Telephone:	775-684-0196
Fax:	775-684-0188
Email:	<a href="mailto:gkdavis@admin.nv.gov">gkdavis@admin.nv.gov</a>

**5. 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.

**5.1 State Agency Order Placement**

5.1.1 Prior to issuing an Order, a Nevada State Agency shall ensure it has met the State's applicable purchasing requirements listed below. For the purposes of clarification only, (i) a "Nevada State Agency" means any Nevada Executive Branch agency, and (ii) the information provided below in 5.1.1.1 is for the Nevada State Agency's reference only and not an obligation for the Contractor to manage or ensure compliance. The State is not liable for any costs incurred by vendors prior to entering into a formal contract or Order.

5.1.1.1 Orders shall require a fully executed Work Plan (*refer to Exhibit A*). Work Plan shall include, at a minimum:



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- A. Scope of Work
- B. Consideration
- C. Insurance risk level for cyber liability
- D. Technology Investment Request (TIR) or waiver, if required
- E. Cloud Checklist (*refer to Exhibit B*)
- F. Approval in accordance with Nevada State Administrative Manual

5.1.2 Orders for the university and community college system, the Legislative Counsel Bureau, political subdivisions, and other entities authorized to use statewide contracts in the State of Nevada shall follow using entity policy. The State is not liable for the obligations of any political subdivision which joins or uses any contract resulting from this agreement.

**5.2 Required Approval**

This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

**5.3 Definitions**

5.3.1 "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.

5.3.2 "Contracting Agency" – means the Department of Administration, Purchasing Division.

5.3.3 "Fiscal Year" – means the period beginning July 1st and ending June 30th of the following year.

5.3.4 "Contract" – Unless the context otherwise requires, "Contract" means this Participating Addendum and any document attached and incorporated by reference in Section 5.6 below (each, an "Incorporated Document").

5.3.5 "Participating Addendum" – means this document entitled Participating Addendum exclusive of any Incorporated Documents.

**5.4 Contract Term**

This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 5.11, Contract Termination*.

Effective from:	Upon BOE Approval	To:	09/08/2026 ✓
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**5.5 Notice**

All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; (iii) by certified mail, return receipt requested or (iv) by email to the address(es) specified in section 4 above. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission to the number such party has specified in writing.

**5.6 Incorporated Documents**

The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of Products and Services available for purchase under the Contract. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	MASTER AGREEMENT # AR2493
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Any provision, term or condition of Attachment AA that contradicts the terms of this Participating Addendum, or that would change the obligations of the State under this Participating Addendum, shall be void and unenforceable.

**5.7 Consideration**

The State is not liable for the obligations of any political subdivision which joins or uses any contract resulting from this agreement.

Each Nevada State Agency project shall require a fully executed work plan as identified in *Section 5.1, State Agency Order Placement*.

The parties agree that Contractor will provide the Products and Services ordered at the cost described in the Order and the Work Plan, as applicable.

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the Order and as applicable, the Work Plan. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

**5.8 Billing Submission: Timeliness**

The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the state no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the state of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

**5.9 Contract Termination**

5.9.1 Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this Contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 5.5, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have reasonably avoided.

5.9.2 State Termination for Non-Appropriation. The continuation of an Order beyond the then-current current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. If for any reason the Purchasing Entity's funding from State and/or federal sources for an Order is not appropriated or is withdrawn, limited, or impaired, the Purchasing Entity may terminate the Order, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or upon any future date specified therein).

5.9.3 Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under *Section 5.9.4*. This Contract may be terminated by either party upon written notice of breach and termination to the other party on the following grounds:

5.9.3.1 If Contractor materially breaches any provision of the Contract; or

- 5.9.3.2 If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the Products or Services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
  - 5.9.3.3 If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
  - 5.9.3.4 If the State materially breaches any duty under this Contract; or
  - 5.9.3.5 If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
  - 5.9.3.6 If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- 5.9.4 Time to Correct. Unless the parties agree that the breach is not curable, or unless the parties agree that circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in *Section 5.5, Notice*, and the subsequent failure of the breaching party within thirty (30) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under *Section 5.9.3*, above, shall run concurrently, unless the notice expressly states otherwise.
- 5.9.5 Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this Section survive termination:
- 5.9.5.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed

and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

- 5.9.5.2 Except in the case of termination of an Order for non-appropriation as provided in section 5.9.2 above, any Orders in effect prior to termination of this Contract shall survive termination of this Contract, and the applicable Purchasing Entity and Contractor shall retain their respective rights and obligations under this Contract and any such Order for the Order's then-effective term.;

#### **5.10 Remedies**

Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

#### **5.11 Limited Liability**

The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Except as described in section 13 of Attachment AA, damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the Fiscal Year budget in existence at the time of the breach.

#### **5.12 Force Majeure**

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to electrical, telecommunications or other utility failures, strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

**5.13 Representations Regarding Independent Contractor Status**

Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract through no fault of its own; Contractor will reimburse the State for that liability.

**5.14 Insurance Schedule**

Unless expressly waived in writing by the State, Contractor must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in *Attachment AA, Section 16*. The State shall have no liability except as specifically provided in the Contract.

Contractor shall not commence work before Contractor has provided the required evidence of insurance to the Purchasing Entity. The State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

**5.15 Compliance with Legal Obligations**

Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor shall provide proof of its compliance upon request of the Contracting Agency. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law to be paid by Contractor. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159.

**5.16 Waiver of Breach**

Failure to declare a breach or the actual waiver of any particular breach of the Contract by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

**5.17 Severability**

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-



enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**5.18 Assignment/Delegation**

Except for assignment to a successor in interest to any portion of Contractor's business or assets, in which case Contractor shall provide the State reasonable written notice, Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

**5.19 Public Records**

Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that, if the State is subject to any third party claim regarding the State's denial of that third party's public records request for Contractor information or documents, Contractor thereby agrees to defend and indemnify the State from any damages finally awarded against the State to the third party by a court of competent jurisdiction. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

**5.20 Federal Funding**

In the event federal funds are used for payment of all or part of this Contract, Contractor agrees to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:

5.20.1 Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to Executive Orders 12549 and 12689 and Federal Acquisition Regulation subpart 9.4, and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

5.20.2 Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.

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5.20.3 Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), as amended, the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

**5.21 Lobbying**

The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

5.21.1 Any federal, state, county or local agency, legislature, commission, council or board;

5.21.2 Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

5.21.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

**5.22 Proper Authority**

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

**5.23 Disclosures Regarding Current or Former State Employees**

For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.



**5.24 Governing Law: Jurisdiction**

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.

**5.25 Entire Contract and Modification**

This Contract and its Incorporated Documents constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners. This Contract, and any amendments, may be executed in counterparts.

**5.26 Reports and Fees**

5.26.1 Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of an electronic funds transfer (EFT) payment. The fee will be payable to the "State of Nevada Purchasing Division." The Administrative Fee will be one percent (1%) and will apply to all payments (net of returns, credits, or adjustments) received by the Contractor for all Products and Services provided under the Contract during the quarter.

All administrative fee payments shall include the Master Agreement Number on any transmittal document. However, only one Agreement Number must be entered on a transmittal document. If submitting an administrative fee payment for more than one Agreement, then a separate electronic payment and associated transmittal document must be submitted by the Contractor for each Agreement.

The State will not issue an invoice for the Administrative Fee owed to the State. It is the responsibility of the vendor to pay the Administrative Fee with no prompting from the State. Contractor shall pay the quarterly Administrative Fee within forty five (45) days of quarter end (*refer to Section 5.26.3*).

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5.26.2 Quarterly Reports:

Quarterly report forms (*Exhibit C*) may be downloaded from the Purchasing Division website <http://purchasing.nv.gov/vendors/DBINV/>. Reports must be submitted via email to: [nypurch@admin.nv.gov](mailto:nypurch@admin.nv.gov)

5.26.2.1 Nevada Good of the State Quarterly Administrative Fee Report: The Contractor shall submit a Nevada Good of the State Quarterly Administrative Fee Report to the Purchasing Division. The report shall identify total payments (minus returns, credits and adjustments) received by the Contractor from state agencies, the university and community college system, the Legislative Counsel Bureau, political subdivisions, and other authorized entities that were made pursuant to the Agreement.

5.26.2.2 Nevada Good of the State Quarterly Usage Report: The Contractor shall submit a Nevada Good of the State Quarterly Usage Report to the Purchasing Division which shall provide the data element information listed below:

Data Element	Description
Contractor Name	Contractor name as it appears on the contract
Agreement Name	Cloud Solutions 2016-2026
Agreement Number	Master Agreement Number on Page 1 of this document
Report Contact	Name of person completing the report on behalf of the Contractor
Contact Phone	Phone number for the person completing the report
Contact Email	Email address of the person completing the report
Date Submitted	Date the Nevada Good of the State Quarterly Usage Report is submitted to the Purchasing Division
Reporting Quarter	Quarter for which the Contractor is reporting purchases on the contract
Entity Type	Indicate the type of entity making the purchase: <ul style="list-style-type: none"><li>• S for state agency</li></ul>



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	<ul style="list-style-type: none"> <li>• E for university and community college system</li> <li>• L for Legislative Counsel Bureau</li> <li>• P for political subdivisions</li> <li>• O for other authorized entities</li> </ul>
Customer Name	Name of entity making the purchase—if customer has multiple locations, please use the main entity name
Purchase Description	Description of the product or service purchased
Work Plan/Contract Number	Work Plan/Contract number supplied by customer to Contractor. Enter Work Plan/Contract number, Purchase Order number, or other authorization number/identifier. If procurement card is used, enter “PCard”
Work Plan/Contract Line Item	Line item number on the Work Plan/Contract
Quantity	Quantities (excluding returns) of products delivered—enter a quantity of one (1) for a service/project.
Unit Price	Unit price charged (excluding credits) for the product or service purchased
Extended Price	Total price—quantity delivered x unit price charged

5.26.3 Fee Payment and Report Schedule: Contractor agrees to provide Administrative Fee, Nevada Good of the State Administrative Fee Report, and Nevada Good of the State Quarterly Usage Report to the purchasing division even if no payments are made in a quarter in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
March 31	May 15
June 30	August 14
September 30	November 14
December 31	February 14

5.26.4 Report Modifications: The Contractor agrees that the Purchasing Division reserves the right to modify the requested format and contents of the Nevada good of the State Administrative Fee Report and/or the Nevada Good of the

State Quarterly Usage Report by providing thirty (30) calendar days written notice to the Contractor. The Contractor also agrees the Purchasing Division may unilaterally amend the cContract, with (30) calendar days written notice to the Contractor to change the timing for submission of the Nevada Good of the State Administrative Fee Report and/or the Nevada Good of the State Quarterly Usage Report. For the avoidance of doubt, the Purchasing Division may not unilaterally change any other provision of the Contract. The Contractor agrees that if such an amendment is issued by the Purchasing Division, the Contractor shall comply with all contractual terms regarding reporting, as amended.

5.26.5 Timely Reports and Fees: If the quarterly Administrative Fee is not paid and quarterly reports are not received by forty five (45) days of quarter end, then the Contractor will be in material breach of this contract.

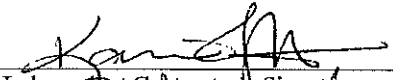
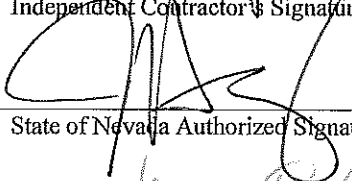

**6. Orders:**

Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from the 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.



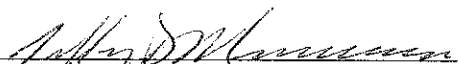
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IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by parties below.

	April 27, 2018	Contracts Manager, Public Sector
Independent Contractor's Signature	Date	Independent Contractor's Title
	5-4-2018	Administrator
State of Nevada Authorized Signature	Date	Title
		APPROVED BY BOARD OF EXAMINERS
Signature – Board of Examiners		

On: 6/19/18  
 Date

Approved as to form by:

	On: <u>1 May 18</u>
Deputy Attorney General for Attorney General	Date

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	<a href="mailto:sberry@naspovaluepoint.org">sberry@naspovaluepoint.org</a>

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