



Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

State of West Virginia
Master Agreement

Order Date: 2016-11-09

CORRECT ORDER NUMBER
 MUST APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS
 ORDER SHOULD BE DIRECTED TO
 THE DEPARTMENT CONTACT.

Order Number: CMA 0214 0214 SUR1700000001	Procurement Folder: 270521
Document Name: WSCA-NASPO Cooperative Purchasing Program-Online Auction	Reason for Modification:
Document Description: Surplus Asset Liquidation/Auction	
Procurement Type: Central Master Agreement	
Buyer Name: Linda Harper	
Telephone: (304) 558-0468	
Email: linda.b.harper@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2016-11-15
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2017-11-14

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000220779 GOVDEALS INC 100 Capitol Commerce Blvd suite 110 MONTGOMERY AL 36117-4260 US Vendor Contact Phone: (800) 613-0156 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Elizabeth J Perdue Requestor Phone: (304) 356-2425 Requestor Email: elizabeth.j.perdue@wv.gov

INVOICE TO	SHIP TO
ACCOUNTING SECTION DEPARTMENT OF ADMINISTRATION 2019 WASHINGTON ST E PO BOX 50121 CHARLESTON WV 25305-0121 US	STATE OF WEST VIRGINIA IN CARE OF SURPLUS PROPERTY 2700 CHARLES AVENUE DUNBAR WV 25064 US

VENDOR COPY

Total Order Amount	Open End
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JBH 11-15-2016

PURCHASING DIVISION AUTHORIZATION SIGNED BY: <i>[Signature]</i> DATE: 11/17/16 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM SIGNED BY: <i>[Signature]</i> DATE: 11/22/16 ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION SIGNED BY: <i>[Signature]</i> DATE: 11/22/16 ELECTRONIC SIGNATURE ON FILE
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Extended Description:

THE VENDOR, GOVDEALS, INC. AGREES TO ENTER INTO THIS OPEN-END COOPERATIVE CONTRACT IN ACCORDANCE WITH WEST VIRGINIA CODE OF STATE RULE 148CSR1 SECTION 148-1-7-8 TO PROVIDE SURPLUS ASSET LIQUIDATION AND AUCTION SERVICES PER THE WESTERN STATES CONTRACTING ALLIANCE (WSCA) - NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICERS (NASPO) MASTER AGREEMENT NO: 40-000-14-0059 AND THE STATE OF WEST VIRGINIA PARTICIPATING ADDENDUM.

THIS CONTRACT SHALL BECOME EFFECTIVE ON 11/15/2016 AND EXTEND FOR A PERIOD OF ONE YEAR AND MAY BE RENEWED ANNUALLY WITH MUTUAL AGREEMENT OF ALL PARTIES FOR AS LONG AS THE MASTER AGREEMENT REMAINS IN EFFECT.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	80141705			LS	\$0.000000
	Service From	Service To			

Commodity Line Description: SURPLUS ASSET LIQUIDATION/AUCTION SERVICES

Extended Description:

PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING PROGRAM
Online Surplus Auction Services
Administered by the State of New Mexico (hereinafter "Lead State")

MASTER AGREEMENT

Gov Deals, Inc

Master Agreement No: 40-000-14-00059
(hereinafter "Contractor")

And

The State of West Virginia
State Agency for Surplus Property
(hereinafter "Participating State/Entity")

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1. Scope: This addendum covers the Online Auction 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 WSCA-NASPO 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. Participating State Modifications or Additions to Master Agreement:
 - a. WV-96 - The contract is hereby modified to include the terms contained in the WV-96 Agreement Addendum, which is attached hereto and specifically incorporated herein by reference.
 - b. Antitrust: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.
 - c. Confidentiality: The Vendor agrees, as applicable, that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>, as applicable.

PARTICIPATING ADDENDUM
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MASTER AGREEMENT
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(hereinafter "Contractor")

And

The State of West Virginia
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d. This participating addendum shall be in effect on 11/15/2016 and extends for a period of one year and may be renewed annually with mutual agreement of all parties for as long as the Master Agreement remains in effect.

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

<u>Contractor</u>	
Name	Roger Gravley
Address	100 Capitol Commerce Boulevard, Suite 110
Telephone	800-613-0156
Fax	1-334-387-0519
E-mail	vendor@govdeals.com

<u>Participating Entity</u>	
Name	State Agency for Surplus Property
Address	2019 Washington Street, East, Charleston, WV 25305
Telephone	304-558-2306
Fax	304-558-6026
E-mail	

5. Subcontractors: All [contractor] dealers and resellers authorized in the State of West Virginia, as shown on the dedicated [contractor] (cooperative contract) website, are approved to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement. The [contractors] dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

6. 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

**PARTICIPATING ADDENDUM
 WSCA-NASPO COOPERATIVE PURCHASING PROGRAM
 Online Surplus Auction Services
 Administered by the State of New Mexico (hereinafter "Lead State")**

**MASTER AGREEMENT
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 Master Agreement No: 40-000-14-00059
 (hereinafter "Contractor")**

And

**The State of West Virginia
 State Agency for Surplus Property
 (hereinafter "Participating State/Entity")**

agreement applies to such Order.

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

Participating State: State Agency for Surplus Property	Contractor:
By: <i>EJ Perdue</i>	By: <i>Roger Gravley</i>
Name: <i>Elizabeth Perdue</i>	Name: Roger Gravley
Title: <i>Manager</i>	Title: President
Date: <i>11-10-16</i>	Date: 11/8/16

For questions on executing a participating addendum, please contact:

WSCA-NASPO

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

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

David Tincher, Purchasing Director
West Virginia Purchasing Division
2019 Washington St., E.
Capitol Complex Building 15
Charleston, WV 25305

October 20, 2016

Re: *NASPO ValuePoint Cooperative Contract – Offer of Fee Reduction*

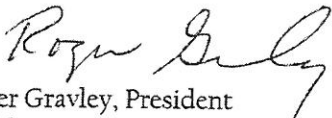
Dear Mr. Tincher:

Based on the State of West Virginia's historical auction sales volume and service model (Tier 2 – with Financial Settlement Services, or FSS), the State currently qualifies for a 10% GovDeals fee. The attached documentation outlines GovDeals' State Government Annual Volume Discount Program.

Therefore, we extend this offer of 10% fee to the State of West Virginia, according to the terms in the referenced documentation. This is a reduction to the "ceiling" pricing reflected in GovDeals' nationally cooperative contract with NASPO ValuePoint (pka WSCA).

Should the State have any questions regarding this offer or any other aspect of GovDeals' service, please do not hesitate to contact me by phone or email (provided below); or contact Rebecca Murphy, Director of Business Development for State Government & Higher Education (980-254-8908; rmurphy@govdeals.com).

Very respectfully submitted,



Roger Gravley, President
rgravley@govdeals.com | Cell: 334-467-2411 | Office: 1-800-613-0156 Ext. 4460

Enclosure: State Government Annual Volume-Based Fee Program

State Government Annual Volume-Based Fee Program

This intent of this program is to establish pricing/fee based on one or more of the most recent years of surplus property sales for state agencies in order to forecast potential future utilization of GovDeals.

GovDeals' **State Government Annual Volume-Based Fee Program** is explained below.

A **state government client's fee** is based upon the documented aggregate sales of their state-level surplus program(s) for the previous year or on an average of multiple years and whether they are collecting auction proceeds (Non-Financial Settlement Services) or having GovDeals collect, assume chargeback liability and quickly remit (Financial Settlement Services).

Fee Basis Table

Annual Volume	Non-FSS Fee	FSS Fee
< \$2 Million (MM)	7.0%	10.0%
\$2 MM to < \$3 MM	6.5%	9.5%
\$3 MM to < \$4 MM	6.0%	9.0%
\$4 MM to < \$5 MM	5.5%	8.5%
\$5 MM or more	5.0%	8.0%

\$5 min fee on all successful auctions.

- The timeframe for the prior and future sales accumulation calculation is determined by state. This timeframe can be based on each state's contract term, fiscal year, a calendar year, etc.
- State level clients using the **Annual Volume-Based Fee Program pricing** are **not eligible** for the **Tiered Fee Reduction Schedule** or for participation in **Annual Volume Discount Programs (AVDP)**.
- All state agencies qualify and aggregate for volume based pricing
- Local cooperative state contract users are at GovDeals' standard pricing and qualify for the applicable AVDP program with the aggregated sales volume basis inclusive of all contract participants' sales (state and local)
- Higher Education entities (Public and Private) remain at GovDeals' standard pricing.
- Special Pricing for single high value assets does not count towards the basis for AVDP Programs or the basis for determining the Annual Volume-Based Fee.
- Year over year (YOY), if the qualifying sales volume increases, then the new rate is based on the higher annual sales volume.
- YOY, if the qualifying sales volume decreases and would, therefore, indicate an increase in the GovDeals' fee, then an average of the previous two year's sales volume will be considered when establish next year's fee if it benefits the client.
- When a state-level client's sales do not reach the sales volume used to establish their Annual Volume-Based Fee, GovDeals may take the initial sales volume used, add it to their first year of actual sales volume, and use a two-year average to establish their fee. Example- prospect indicates they will do \$6MM and does \$3MM in year one. $6+3=9$; $9/2=\$4.5\text{MM}$ basis for their year two fee.
- As an alternative, their year two fee may be based on their commitment to transition after a trial period to exclusive use of GovDeals or to reaching an obtainable sales volume. GovDeals will establish a new Annual Volume-Based Fee start date when this state-level client has completed their transition to GovDeals.



THIS AGREEMENT is entered into by and between the State of New Mexico, General Services Department (hereinafter the "Lead State" or a "Participating Entity" and GovDeals. (hereinafter the "Contractor").

WSCA-NASPO Master Agreement Terms and Conditions

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) WSCA-NASPO 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.

Agreement Administrator means the individual appointed by the State Purchasing Agent to administer the Master Agreement.

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 WSCA-NASPO, and the Contractor, as now or hereafter amended.

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. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.

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.

Products and Services Schedule refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

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.

State Purchasing Agent means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

WSCA-NASPO is the WSCA-NASPO Cooperative Purchasing Program, facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of WSCA-NASPO. The WSCA-NASPO Cooperative Purchasing Organization facilitates administration of the 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. The WSCA-NASPO Cooperative Development Team is identified in the Master Agreement as the recipient of reports and may be performing contract administration functions as assigned by the Lead State.

3. Term of the Master Agreement

The initial term of this Master Agreement is for two (2) years from the date of execution by the Lead State signatory. This Master Agreement may be extended beyond the original contract period for six (6) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

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 the WSCA-NASPO Cooperative Purchasing Organization LLC.

6. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 90 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

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 and 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's 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 WSCA-NASPO'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, 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 Lead State shall have the right to exercise any or all of the following remedies:

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

d. Unless other specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default

as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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 Contractor. If damage does occur, it is the responsibility of the Contractor 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 WSCA-NASPO, 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 WSCA-NASPO, 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 industry (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Consignment Coverage at an amount commensurate with the value of the Participating Entity's property in the care, custody or control of the Contractor. Such coverage will be required only for Tier 2 and Tier 3 activity.

(3) 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 a 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 Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Agency may select the quote that it considers most advantageous, cost and other factors considered.

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 WSCA-NASPO 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 WSCA-NASPO 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 political subdivisions.
- d. WSCA-NASPO Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/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 right 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 the WSCA-NASPO Cooperative Purchasing Organization, or its assignee, a WSCA-NASPO Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The WSCA-NASPO Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping) and other revenues (including commissions charged). The WSCA-NASPO 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 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 WSCA-NASPO Administrative Fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

27. WSCA-NASPO Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following WSCA-NASPO reports.

a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the contract 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 30 day following the end of the calendar quarter (as specified in the reporting tool). "Sales" includes all revenues (including commissions charged).

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 WSCA-NASPO 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 WSCA-NASPO Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State. 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 in shown in Section 27 of Attachment A.

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. 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 WSCA-NASPO 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, Inspection 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.

If Products under this Master Agreement involve primarily the purchase of services and a standard of performance within the meaning of the previous paragraph is not prescribed, the following terms shall apply.

- A. "Services," as used in this subsection, include services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Master Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

- C. The State Purchasing Agent or other Purchasing Entity has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the State Purchasing Agent or other Purchasing Entity performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other Purchasing Entity may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other Purchasing Entity may:
- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
 - (2) reduce the contract price, fee, or commission payable to reflect the reduced value of the services performed.
- F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or Purchasing Entity may:
- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
 - (2) terminate the contract for default.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PURCHASING AGENT'S OR OTHER PURCHASING ENTITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

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. WSCA-NASPO eMarket Center

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

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

At a minimum, the Contractor agrees to the following timeline: WSCA-NASPO 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 WSCA-NASPO to provide any unique information and ordering instructions that the Contractor would like the customer to have.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

STATE OF NEW MEXICO
General Services Department

E. Burckle
(Signature)

BY: *Edwyna L. Burckle*

TITLE: *Cabinet Secretary*

GovDeals, Inc.

(Contractor Name)

Robert L. DeBardelaben
(Contractor Signature)

BY: Robert L. DeBardelaben
(Print Name)

TITLE: Operating 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 AND REVENUE DEPARTMENT

ID NO.: (03-298136-00-8)

BY: *Edwyna L. Burckle*

DATE: 8/13/14

This Agreement has been approved by the State Purchasing Agent of New Mexico:

[Signature]
State Purchasing Agent

8/20/14
Date

Attachment A (Statement of Work)

Contractor agrees to provide all services and equipment to perform Tier One requirements in accordance with Contractor's proposal and the solicitation.

Contractor agrees to provide all services and equipment to perform Tier Two requirements in accordance with Contractor's proposal and the solicitation.

To this end, the Statement of Work includes but is not limited to the following:

1. All hardware, software and servers needed to operate the online auction service will be provided by the Contractor. The Contractor must give the Lead State and Participating Entity full access to their assigned online auction account and the Lead State or other Participating Entity must be allowed to load their auction items via a common internet browser. In the alternative, the Contractor must be able to create the listing in a timely fashion (especially for Tier Three, but Participating Entities in other Tiers may wish to leverage this service as well.) The system shall be available to the Lead State or other Participating Entity 24 hours a day, 7 days a week. Items the Lead State or other Participating Entity wishes to sell can be loaded at any time that best suits the schedule of the Lead State or other Participating Entity.
2. The Contractor will provide and absorb all cost of a secure hosting facility to operate the online auction system and allow the Lead State or other Participating Entity full access to the account. The Lead State or other Participating Entity will not be required to install any additional computer hardware or software at their location. The only requirements will be that the Lead State or other Participating Entity have an internet connection via a common web browser and a digital camera. The auction service shall not interact with any Lead State or other Participating Entity computer hardware, software or data base systems other than accessing its account through a common web browser.
3. All maintenance and upgrades to the hardware and software that the Contractor provides over the term of the contract shall be made at no cost to the Lead State or other Participating Entity.
4. The Contractor will supply all operating software and applications needed for the auction site to function.
5. All connectivity to the internet shall be accessible through industry standard internet connections, web browsers and email. The system must allow access from Windows based systems.
6. Contractor shall provide all support, including email and telephone support needed to operate the auction site. Live, 24/7 support via online chat, email or toll-free phone.

7. Contractor shall provide all security systems, anti-virus and firewalls capable of preventing the hacking of any auction information from the auction servers, capable of preventing the assimilation or distribution of viruses and other programs and capable of preventing any bidder from learning the identity of any other bidder.
8. Contractor shall provide contingency plans to backup information and recover information. The Contractor shall have a disaster recovery plan that covers internet failure, electricity failure or systems failures.
9. The system shall allow the Lead State or other Participating Entity to post their own Terms and Conditions for each asset offered for sale and also provide a quick link to the Lead State or other Participating Entity Terms and Conditions. The systems must also provide a section for posting special instructions such as when payment should be made, etc.
10. The Contractor's system should allow the Lead State or other Participating Entity to charge freight costs if the bidder is unable to pick up the winning bid items.
11. The Contractor's systems must be capable of withdrawing and cancelling an auction without penalty. The Contractor shall notify bidders if an auction has been withdrawn and cancelled.
12. **Licensure and Insurance**
Contractor must be properly licensed and insured. Contractors shall provide proof of required licensing, as applicable, in Lead State or other Participating Entity, including all applicable licensure and bonding for the proposed services at the time of contracting.
13. Contractor shall provide start-up support to ensure initial agency data is uploaded properly for proper use and management of auctions including but not limited to user access rights and restrictions (including authorization workflows), and buyer and buyer-groups rights and restrictions (if applicable).
14. Contractor shall provide an online training environment to facilitate training new users through hands-on tutorials.
15. Contractor shall provide the level of support as indicated in their proposal.
16. Contractor shall provide verifiable receipts for buyer upon payment (buyer's certificate).
17. Contractor shall provide company policy and/or system restriction on buyer's use of bidding agents.
18. Contractor shall provide fraud detection/prevention in accordance with their proposal.
19. Contractor shall provide security services and support (physical and system) specific to the Auction System in accordance with their proposal, including privacy protection available to buyers and sellers. (Physical security pertains to any servers, staff and facilities that support the Contractor's operations.)

20. Contractor shall provide any software upgrade capability including new version releases at no additional cost to the Lead State or any Participating Entity.
21. Contractor shall provide a system uptime percentage of % as stated in their proposal as well as providing a schedule of expected downtime maintenance.
22. Contractor shall provide a method of system monitoring to ensure optimal performance.
23. Contractor shall offer system backup and a plan to support auctions if the system is unavailable in accordance with the proposal.
24. Contractor shall provide regular marketing services to improve revenue.
25. Contractor shall provide reports as agreed upon by the parties and in accordance with Contractor's proposal.

In addition to the above, for Tier Two, the Statement of Work includes, but is not limited to, the following:

1. Contractor shall provide a complete accounting of items from pick up to final sale or disposition. Contractor shall be fully responsible for the collection of monies and reimbursement to the Participating Entity. Contractor shall collect and process all taxes due.
2. Contractor shall keep records of all financial matters pertaining to the sales in accordance with generally accepted accounting principles. The financial records must be made available to representatives of the Lead State or other Participating Entity or any other governmental agency with jurisdiction to audit. The records must be maintained for a period of five (5) years after the term of the Master Agreement.
3. Contractor shall provide revenue collection through check, money order and credit card payments in accordance with their proposal.

SITE VISIT:

The Lead State or other Participating Entity, upon request, can coordinate a site visit to include IT, Administration, Accounting, Warehouse and Storage.

Attachment B (Fee Schedule)

COMMISSION ON SALES – to remain fixed for the term of this Agreement and all Amendments to this Agreement.

TIER 1 PRICING OPTIONS

- Option A1:** The Client pays a 7.5% fee (subject to a minimum per asset/lot fee of \$5.00) which will be reduced according to the Tiered Fee Reduction Schedule. GovDeals will invoice the client each month for fees on items sold in the previous month. The Client is allowed thirty (30) calendar days from date of invoice receipt to remit payment.
- Option A2:** The Client pays a 7.5% fee (subject to a minimum per asset/lot fee of \$5.00) but is given the capability to easily pass the entire fee on to the winning bidder as an Administrative Fee. The Client is only allowed to pass on to the winning bidder the amount charged to them based on the tiered pricing schedule below. The amount invoiced to the winning bidder will include the gross sale amount of the item, the administrative fee, any special fees and sales taxes, if any. By passing this fee on to the winning bidder, the Client's effective fee is 0%. GovDeals will invoice the Client each month for fees on items sold in the previous month. The Client is allowed thirty (30) calendar days from date of invoice receipt to remit payment.

TIER 2 PRICING OPTIONS

- Option B1:** The Client pays a 7.5% fee (subject to a minimum per asset/lot fee of \$5.00) which will be reduced according to the tiered fee reduction schedule below. The winning bidder pays a 5% buyer's premium.
- Option B2:** The Client pays a 5% fee (subject to a minimum per asset/lot fee of \$5.00) and the winning bidder pays a 7.5% buyer's premium.
- Option B3:** The Client pays a 2.5% fee (subject to a minimum per asset/lot fee of \$5.00) and the winning bidder pays a 10% buyer's premium.
- Option B4:** The Client pays 0% fee and the winning bidder pays a 12.5% buyer's premium.

TIER 1 and TIER 2 AUCTION GROSS:

Under \$5000	7.5%
\$5000-\$20,000	7.5%
\$20,000-\$50,000	7.5%
Above \$50,000	7.5%

COMMISSION for vehicles up to \$3,000 7.5%

COMMISSION for vehicles over \$3,000 7.5%

OTHER COSTS TO SELLING ENTITIES: \$0.00

BUYER'S PREMIUM 5.0%

FEE REDUCTION SCHEDULE (available only if Client chooses to pay the full 7.5% fee):

Where an asset sells for up to \$100,000, GovDeals fee is 7.5% of the winning bid, but no less than \$5.00.

Where an asset sells for between \$100,000 and \$500,000, GovDeals fee is 7.5% of the winning bid up to \$100,000, plus 5.5% of the winning bid for auction proceeds in excess of \$100,000 up to \$500,000.

Where an asset sells for between \$500,000 and \$1,000,000, GovDeals fee is 7.5% of the winning bid up to \$100,000, plus 5.5% of the winning bid for auction proceeds in excess of \$100,000 up to \$500,000, and 3.5% of the winning bid amount in excess of \$500,000 up to \$1,000,000.

Where an asset sells for between \$500,000 and \$1,000,000, GovDeals fee is 7.5% of the winning bid up to \$100,000, plus 5.5% of the winning bid for auction proceeds in excess of \$100,000 up to \$500,000, and 3.5% of the winning bid amount in excess of \$500,000 up to \$1,000,000, and 2.5% of the bid amount in excess of \$1,000,000.

Pay Equity Reporting Form PE10-249

Company name:

Mailing address line 1:

Mailing address line 2:

City, state, zip code:

Phone:

E-mail address:

FEIN number:

EAN number:

SHARE vendor number:

Reporting calendar year:

GovDeals, Inc.
5907 Carmichael Pl.
0
Montgomery, AL 36117
800-613-0156
vendor@govdeals.com
63-1241096
0
0
2013

Job Category	No. Females	No. Males	Gap (Absolute %)
1 - Officers and Managers	5	5	44.50%
2 - Professionals	9	0	N/A
3 - Technicians	0	0	N/A
4 - Sales Workers	1	26	37.47%
5 - Office and Admin. Support	5	10	14.17%
6 - Craft Workers (Skilled)	0	0	N/A
7 - Operatives (Semi-Skilled)	0	0	N/A
8 - Laborers (Unskilled)	1	4	0.00%
9 - Service Workers	0	0	N/A

Total # Job Categories With No Employees : 4

Total # Female Only Job Categories : 1

Total # Male Only Job Categories : 0

Total # Females (all categories) : 21

Total # Full Time Females : 24

Total # Part Time Females : 0

Total # Males (all categories) : 45

Total # Full Time Males : 42

Total # Part Time Males : 0

Total # Employees : 66

Female % Workforce : 31.82%

Male % Workforce : 68.18%

Document must be signed by the principal executive of the company:

ITB# RFP# 40-000-14-00059

PO#



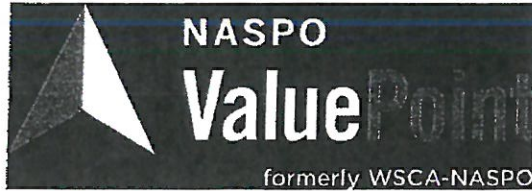
Robert L. DeBardelaben, Operating President

Name and title, printed

Signature

7/29/2014

Date



THIS AMENDMENT No. 1 to the NASPO ValuePoint Master Agreement is entered into by and between the State of New Mexico, General Services Department (hereinafter the "Lead State" or a "Participating Entity" and GovDeals, Inc. (hereinafter the "Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISION OF THE ABOVE-REFERENCED MASTER AGREEMENT IS AMENDED AS FOLLOWS:

1. The term of the Master Agreement is extended an additional two (2) years. The contract shall expire August 19, 2018.

All other provisions of the master agreement shall remain in full force and effect.

00:11:11 AM 08/19/18
STATE PURCHASING AGENT

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of execution by:


STATE OF NEW MEXICO
General Services Department


(Signature)

BY: Lawrence O. Maxwell

TITLE: State Purchasing Agent


GovDeals, Inc.
(Contractor)


(Signature)

BY: Roger Gravley

TITLE: President

This Agreement has been approved by the State Purchasing Agent of New Mexico:


State Purchasing Agent

3/31/16
Date

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** – Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** – Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State's original solicitation. Any contrary delivery terms are hereby deleted.

ACCEPTED BY:
STATE OF WEST VIRGINIA

Spending Unit: Surplus Property
Signed: EQ Perdue
Title: Manager
Date: 11-2-16

VENDOR

Company Name: GovDeals, Inc.
Signed: Tracy Selby
Title: President
Date: 11/2/16