

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
CHILD SAFETY SEATS 14-19
Administered by the State of New Jersey (hereinafter "Lead State")

MASTER AGREEMENT
Evenflo Company
A86334
(hereinafter "Contractor")

And

State of North Dakota
(hereinafter "Participating State")

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1. **Scope:** This addendum covers the Child Safety Seats lead by the State of New Jersey for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the state's chief procurement official.

2. **Participation:** This participating addendum is a cooperative purchasing contract established pursuant to North Dakota Century Code (N.D.C.C.) § 54-44.4-13. This participating addendum is made available to State entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C. ch. 39-04.2, and the International Peace Garden.

3. **Participating State Modifications or Additions to Master Agreement:**
These modifications or additions apply only to actions and relationships within the Participating Entity.

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

The following terms and conditions are applicable to this Participating Addendum in addition to the Master Agreement terms and conditions:

- a. **Prepayment.** Participating State will not make any advance payments before performance by Contractor under this Contract.
- b. **Payment of Taxes by Participating State.** Participating State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E 2001. State will furnish certificates of exemption upon request by the Contractor.
- c. **Termination for Lack of Funding or Authority.** Participating State by written notice to Contractor, may terminate the whole or any part of this Contract under any of the following conditions:
 - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
 - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or

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are no longer eligible for the funding proposed for payments authorized by this Contract.

- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- d. **Confidentiality.** Contractor shall not use or disclose any information it receives from State under this Contract that State has previously identified as confidential or exempt from mandatory public disclosure except from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by State. State shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract.
- e. **Compliance with public records laws.** Contractor understands that, except for disclosures prohibited in this Contract, State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records obtained or generated by Contractor under this Contract may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Contractor agrees to contact State as soon as reasonably possible upon receiving a request for information under the public records law and to comply with State's instructions on how to respond to the request.
- f. **Spoliation.** Contractor shall notify State of all potential claims that Contractor is aware of that arise as a result of Contractor's performance under this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.
- g. **Indemnification.** In addition to the Indemnification obligations of Contractor, found in Section 11 of Appendix 01 – 14-X-23312 (WSCA NASPO Master Agreement Terms and Conditions), Contractor agrees that any attorney appointed to represent the State must first

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qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08

- h. **Alternative dispute resolution – jury trial.** State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.
- i. **Attorney fees.** In the event a lawsuit is instituted by State to obtain performance due under this Contract, and State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay State's reasonable attorney fees and costs in connection with the lawsuit.
- j. **Reports.** As requested, Contractor will provide an electronic report showing name of agency or entity who made a purchase, invoice date, service provided, and total price.

The following terms and conditions are modified for this Participating Addendum:

- a. **Governing Law and Venue:** This Participating Addendum and Master Agreement are governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce these must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

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

Contractor

Name	Patsy Pilcher
Address	PO Box 1046
Telephone	800-768-6077
Fax	800-382-4565
E-mail	evenflosales@worldsafe.net

Participating Entity

Name	Christy Schafer
Address	600 E Boulevard Ave, Dept. 012 Bismarck, ND 58505
Telephone	701-328-2740
Fax	701-328-1615

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E-mail	cmschafer@nd.gov
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6. Subcontractors:

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

7. Purchase Order Instructions:

All orders should contain the following: (1) Mandatory Language "PO is subject to NASPO ValuePoint Contract # A86334" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount. Please channel your PO through one of our authorized resellers so they can arrange for proper ordering and installation of your unit.

8. Price Agreement Number:

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: 135 and the Lead State price agreement number: A86334.

9. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement number A86334 (administered by the State of New Jersey) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and

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conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State: <i>North Dakota</i>	Contractor: <i>Evenflo Company</i>
By: <i>Christy Schafer</i>	By: <i>Patsy Pilcher</i>
Name: <i>Christy Schafer</i>	Name: <i>Patsy Pilcher</i>
Title: <i>Procurement Officer II</i>	Title: <i>Account Manager</i>
Date: <i>11-5-18</i>	Date: <i>11-5-2018</i>

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint Cooperative Development Team

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

**[Fully executed PDF copy of this document should be emailed to
 PA@naspovaluepoint.org to support documentation of participation
 and posting in appropriate data bases]**