

NASPO ValuePoint
**PARTICIPATING ADDENDUM
MAILROOM EQUIPMENT,
SUPPLIES & MAINTENANCE**
Led by the State of **Arizona**



Master Agreement #: ADSPO16-169897

Contractor: **DMT SOLUTION GLOBAL CORPORATION
(D/B/A BLUECREST)**

Participating Entity: **STATE OF WISCONSIN**

Participating State Contract #505ENT-O18-NASPOMAILEQ-05

The following products or services are included in this contract portfolio:

- All products and accessories listed on the Contractor page of the NASPO ValuePoint website, including those in the following awarded categories.
 - Folders-Inserters Production
 - Inserters-Production
 - Pre-Sorting Equipment Production
 - Software License & Subscription

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the *Mailroom Equipment, Supplies & Maintenance* led by the State of **Arizona** for use by state agencies and other entities located in the Participating State *Wisconsin* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

This is not a mandatory contract for any Purchasing Entities. The Purchasing Entities may obtain related Deliverables and Services from other sources during the term of this Participating Addendum. The Participating Entity makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Deliverables or Services will be procured.

2. Participation: The NASPO ValuePoint Master Agreement referenced above may be used by all state agencies, institutions of higher Education, political subdivisions and other entities authorized by an individual state's statutes to use state/entity contracts are subject to the approval of the respective State Chief Procurement Official. Wisconsin Statutes (s. 16.73, Wis. Stats.) establish authority to allow Wisconsin municipalities to purchase from state contracts. A "municipality" is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis. Stats. 501(C)3 organizations and/or private schools and institutions are not eligible to use pricing under this contract. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

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3. Contract Term: The term of this Participating Addendum will be effective July 22, 2019 through May 14, 2020 and coterminous with the Master Agreement term unless otherwise cancelled or terminated as set forth in this Participating Addendum by the Participating State. Lead State amendments to extend the term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and conditions of the Master Agreement or this Participating Addendum.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Thomas J. Tanaka
Address:	37 Executive Drive, Danbury, Connecticut 06810
Telephone:	(310) 714-9945
Fax:	NA
Email:	tom.tanaka@bluecrestinc.com

Lead State

Name:	Rocky Advani
Address:	Arizona DOA-SPO, 100 N. 15 th Ave, Suite 201, Phoenix, AZ 85007
Telephone:	602-542-0100
Fax:	602-542-5508
Email:	rocky.advani@azdoa.gov

Participating Entity

Name:	William Goff
Address:	101 E Wilson Street, 6 th Floor, Madison, WI 53703
Telephone:	(608) 266-1002
Fax:	(608) 267-0600
Email:	william2.goff@wisconsin.gov

5. MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

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

Participating Entity must check one of the boxes below.

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

The following changes are modifying or supplementing the Master Agreement terms and conditions. The attached **Exhibit A** is incorporated in the Participating Addendum and apply to all transactions under this Participating Addendum.

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- 5.1. Hardware and Software terms and conditions. The attached **Exhibit A** is incorporated in the Participating Addendum and apply to all transactions under this Participating Addendum. Additionally, Equipment Lease, Purchase and Rental Agreements are authorized in accordance with the terms of NASPO Master Price Agreement number: ADSPO16-169897 and its associated exhibits, attachments and addendums.

<https://www.naspovaluepoint.org/portfolio/mailroom-equipment/bluecrest/>

5.2. **Lease Agreements:**

Lease agreements shall be generally allowable under the Contract. However, such agreements and/or purchases must be reviewed by the appropriate parties within each Purchasing Entity's organization. Any leases entered into during the term of this Participating Addendum will remain in full force and effect throughout the stated lease term of such lease agreement, subject to the termination provisions stipulated with such lease.

- (a) For the BlueCrest product line ("Folders-Inserters Production, Inserters-Production, Pre-sorting Equipment Production and Software License and Subscriptions applicable to DMT Production Mail Equipment") (the "DMT Product Line") leases may be available in an applicable State through three (3) third (3rd) party lending companies. The preferred leasing company is PNC Equipment Finance. The two alternative leasing companies are IBM Credit LLC and Municipal Asset Management, Inc. The terms and conditions of the (i) Municipal Master Lease Purchase Agreement or the Muni Short Form FMV lease [PNC], (ii) a Lease/Purchase Master Agreement for State and Local Government, [IBM] and (iii) a Tax-Exempt Lease/Purchase Agreement and a Rental Agreement [MAM] lease (together the "DMT Leases"), as such may be available in this State, and have been included with this Participating Addenda. Pricing by third party leasing companies for DMT Leases to be provided.
- (b) The DMT Leases may be offered under the Agreement and this State Participating Addenda and, in such cases, if there is a conflict between a DMT Lease, and the State Participating Addenda, the DMT Leases shall govern. Alternatively, the DMT Leases may be offered as a separate contract outside the Participating Addenda and this Agreement. Further, in the event this State wishes to use its own lender, it will be considered a separate contract outside the Participating Addenda and this Agreement. Note that DMT Product Line is not available for an Equipment Rental program, as described in Section 3.16 of the Agreement".

- 5.3. Sales & Purchase Tax will be charged, if required under Wisconsin State Statute.

5.4. **Subcontractors:**

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

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5.5. **Purchase Order Instructions:**

All orders under this PA shall contain the following:

- (a) Mandatory Language "PO is subject to NASPO ValuePoint Master Agreement number ADSPO16-169897"
- (b) Your Name, Address, Contact, & Phone-Number and
- (c) reference to the state contract number. "505ENT-O18-NASPOMAILEQ-05"

Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

5.6. **Price Agreement Number:**

All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the Participating State/Entity's contract number: **505ENT-O18-NASPOMAILEQ-05** and the Lead State price agreement number: ADSPO16-169897.

5.7. **Individual Customer:**

Each State agency and political subdivision, as a Purchasing Entity, that purchases products/services under this Participating Addendum 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 Participating Addendum Master Agreement; and they will have the same rights and responsibilities for their purchases as the Participating Entity 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 Purchasing Entity individually.

- 5.8. Section 7.2 [State of Arizona Uniform Terms and Conditions], subsection 6 [Risk and Liability], subsection 6.1 [Risk of Loss] is hereby amended by adding the following at the end of said subsection 6.1: "provided, however, that the State shall be deemed to have accepted a Product as to which it doesn't indicate nonconformity within sixty (60) days of the delivery of the product."

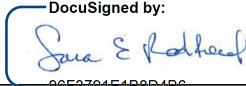

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6. ENTIRE AGREEMENT

This Participating Addendum and the Master Price Agreement number ADSPO16-169897 (administered by the State of Arizona) 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 conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price 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 Participating Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State/Entity.

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

Participating Entity: State of Wisconsin	Contractor: DMT Solutions Global Corporation (d/b/a BlueCrest)
Signature:  <small>DocuSigned by: 96F3791E1B8D4B6...</small>	Signature:  <small>DocuSigned by: 7E561D5A5A0C4B3...</small>
Name: Sara Redford	Name: Susan Gabrielsen
Title: Director, State Bureau of Procurement	Title: Vice President of Sales, North America
Date: 7/29/2019 12:29 PM CDT	Date: 7/11/2019 3:00 PM CDT

Susan Gabrielsen
7E5C1D5A5A0C4B3...

7/11/2019 | 3:00 PM CDT **NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM**
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Participating State Modifications or Additions to Master Agreement.

1. **Additional Term Definitions.** All terms used and not defined herein shall have the meaning given within the Master Price Agreement and Request for Proposal.

"Agency" or **"State Agency"** means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority, as defined in Wis. Stat. s. 16.70(2).

"Business Day" means any day on which the Contracting Agency is open for business.

"Confidential Information" means all tangible and intangible information and materials being disclosed in connection with this Participating Addendum, in any form or medium without regard to whether the information is owned by the Purchasing Entity, Participating State or by a third party, which satisfies at least one of the following criteria:

- a. Personally Identifiable Information;
- b. Proprietary Information;
- c. non-public information related to the Purchasing Entity's or Participating State's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or
- d. information expressly designated as confidential in writing by the Purchasing Entity or Participating State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

"Contract" means a binding agreement for the procurement of goods and services under the terms and conditions contained within the Participating Addendum, Master Agreement, Solicitation and Addendums, Contract Vendor's response to the Solicitation, and related Agreements.

"Contracted Personnel" means a Contractor's employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor to render Services under this Contract.

"Contracting Agency" means the Agency entering into this Contract on behalf of the State.

"Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within a Purchasing Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.

"Day" means calendar day unless otherwise specified in this Contract.

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"Default" means the omission or failure to perform a contractual duty or provide Goods or Services as contractually required.

"Deliverables" means all project materials, including Goods, software licenses, data, and documentation created during the rendering of Services hereunder.

"Goods" means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related Services as the situation may require.

"Inspection" means an examination of Deliverables or Services provided under this Contract in order to determine Specifications were met.

"Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable:

- a. the individual's Social Security number;
- b. the individual's driver's license number or state identification number;
- c. the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account;
- d. the individual's DNA profile; or
- e. the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

"Properly-submitted Invoice" is one that is submitted in accordance with instructions contained on the State's Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

"Proprietary Information" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

"Public Data" means all Confidential Information that is created or originating with the Purchasing Entity whether such data or output is stored on the State or Purchasing Entity's

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hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State, a Purchasing Entity, or by Contractor. Public Data includes any federal data that the State or Purchasing Entity controls or maintains, that is protected under federal laws, statutes, and regulations.

"Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within a Purchasing Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.

"Services" means all work performed, and labor, actions, recommendations, plans, research, customizations, modifications, documentation, and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Contract.

"Software" means commercial operating off-the-shelf machine-readable object code instructions including microcode, firmware and operating system software that are preloaded on equipment. The term "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.

"State" means the State of Wisconsin.

"Subcontract" means an agreement, written or oral, between the Contractor and any other party to fulfill the requirements and performance obligations of this Contract.

"Subcontractor" means an entity that enters into a Subcontract, with the Contractor for the purpose of delivering Goods or rendering Services to the State.

"Termination for Convenience" means contract cancellation.

"Third Party" means any party who does not have a direct connection with this Contract, but who might be affected by it. A Third Party is a supplier of ancillary goods or support for a product or service who is neither the Contractor, Subcontractor, or the Purchasing Entity.

2. **Amendments.** The terms of this Participating Addendum, excluding the Master Agreement, shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Participating State and Contractor.
3. **Contract Term.** The term of this Participating Addendum will be effective July 22, 2019 through May 14, 2020 and coterminus with the Master Agreement term unless otherwise cancelled or terminated as set forth in this Participating Addendum by the Participating State. Lead State amendments to extend the term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and

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conditions of the Master Agreement or this Participating Addendum. In the event the Contract or the Participating Addendum is terminated the leases entered into during the term of this Participating Addendum will remain in full force and effect for the duration of the lease term.

4. Order of Precedence

In the event of conflict of terms, the following order of precedence will follow:

- State of Wisconsin Participating Addendum
- Arizona NASPO ValuePoint Master Agreement, as amended
- The solicitation, including all addendums
- Contract Vendor' response to the Solicitation, as accepted by the Lead State

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. No other terms and conditions shall apply, including terms not accepted by both parties, unaccepted terms listed or reference on a website, terms in the quotation or sales order, or similar documents subsequently provided by the Contract Vendor.

5. Termination of Participating Addendum.

- a. **Termination for Convenience; Cancellation.** The Cancellation terms and conditions remain as stated in the Master Agreement. Additional terms include:

1. The Participating State reserves the right to cancel this Contract in whole or in part without penalty, and without prior notice, if the Contractor:
 - Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity; or
 - Makes an assignment for the benefit of creditors; or
 - Fails to maintain the confidentiality of the Purchasing Entity's or Participating State's information that is considered to be Confidential Information; or
 - Performs in a manner that threatens the health or safety of a Purchasing Entity or Participating State employee, citizen, or customer.
2. The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:
 - Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes; or

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- Incurs a delinquent Wisconsin tax liability; or
 - Fails to submit a non-discrimination or affirmative action plan as required herein; or
 - Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
 - Contractor has not satisfied a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government; or
 - Becomes a state or federally debarred contractor.
- b. **Termination for Cause.** The Cancellation terms and conditions remain as stated in the Master Agreement. In addition to the rights reserved in the Contract, the Participating State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Participating State shall provide thirty (30) days' prior written notice of the termination and the reasons for it to the Contractor, with a thirty (30) day allowance for Contractor to cure or provide an acceptable plan to cure. Absent Contractor's cure, the State may terminate the Contract or applicable Order. Upon termination under this Section, all goods, materials, documents, data, and reports prepared by the Contractor with payment tendered to Contractor under the Contract shall become the property of and be delivered to the Purchasing Entity on demand.
6. **FORCE MAJEURE.** Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
7. **Post Contract Obligations.** Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.
8. **Usage/Spend Report.** The Contractor must submit electronic reports via e-mail on a quarterly basis and one annual summary report on all sales including service, made against

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this Participating Addendum/Master Agreement to the Participating State Primary Contact or designee.

- a. The report file format shall be Microsoft Excel compatible format and shall easily be sorted for various data and inclusion into a pivot table;
- b. The quarterly reports will be filed using the schedule in Section e below. The annual report shall contain all data within the quarterly reports and include an annual sum total with any additional description notes;
- c. Such reports shall retain the same format throughout the life of the contract unless mutually agreed upon;
- d. The Contractor agrees to provide additional reports if requested by the State of Wisconsin in a format and frequency as mutually agreed upon by both parties; and
- e.

<u>Period End</u>	<u>Report Received By</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The annual summary report is provided after four (4) full quarters of data is collected from the start of the Participating Addendum.

- 9. **Records, Recordkeeping and Record Retention.** Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The Contractor, following final payment and the end of the contract, shall retain all records produced or collected under this Contract for six (6) years. The record retention shall be longer if the particular records are the subject of an audit, needed for a legal action, an open records request has been made.
- 10. **Examination of Records.** The State shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books,

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documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract. Contractor shall permit the Participating State, a Purchasing Entity, or 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 contract, Orders, and related transactions 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 six (6) years. The right shall be longer if the particular records are the subject of an audit, needed for legal action, or an open records request has been made.

11. **Vendor Agreement Form.** The Contractor must sign the State of Wisconsin Vendor Agreement, Wisconsin's Cooperative Purchasing Service form (DOA-3333), to allow entities, as defined on the DOA-3333 form, to purchase through this Participating Addendum.
12. **State Tax Exemption.** The State is exempt from payment of Wisconsin sales or use tax on all purchases. The Contractor shall be responsible for paying all applicable taxes. In the event taxes are due and tax-exempt status is not provided by the Purchasing Entity upon request within a reasonable time, the Purchasing Entity shall pay all applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder. The Purchasing Entity shall provide the tax-exempt status to the Contractor.
13. **Prompt Payment.** The State shall pay the Contractor's Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Deliverables or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in this Contract or Order document. If the State fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to §16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion. Contractor may discontinue performance with any Purchasing Entity of Purchasing Entity fails to pay any undisputed sum due.
14. **Services performed in United States.** Pursuant to s. 16.705(1r), Wis. Stats., Services must be performed within the United States. Where Purchasing Entities which are not subject to this Statute, this requirement may be waived.
15. **Delivery.**
 - a. Contractor shall not make partial shipments of any product on a single Order unless prior authorization is obtained by the Purchasing Entity.
 - b. In those situations in which the "delivery to" address has no receiving dock or agents, the Contractor must be able to deliver to the location specified on the Order without additional cost.
 - c. If there is a special case where an inside delivery fee must be charged and is clearly

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specified on the Purchasing Entity's Order, the Contractor will notify the Purchasing Entity prior to accepting the Order for the Purchasing Entity to determine if the additional cost will require a change to the Order placed.

16. **Promotional Advertising and News Releases.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Participating Addendum shall not be made without prior written approval of the State.
17. **Refund of Credits.** Within sixty (60) Days of the State's request, the Contractor shall pay to the State any credits resulting from an Order that the State determines cannot be applied to future invoices.
18. **Ownership Rights.** Unless an ownership interest is granted or reserved in this Contract, a State Purchase Order issued under this Contract shall allow the State unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the State as part of the performance of the Contract.
19. **Replacement Parts.** All replacement parts provided under this Participating Addendum are new including any warranty provided with such new parts. If such parts do not meet this requirement, the Purchasing Entity must approve in writing prior to shipment of such parts for each Order.
20. **Restrictions.**
In addition to the Master Agreement, restrictions for Hardware, Software, Services, and additional products/Services are as follows:
 - a. **Software.**
 - Software purchases through this Contract must be pre-loaded or provided as an electronic link with the initial purchase, must be related to the procurement of the equipment, and has the following exceptions:
 1. Software such as middleware which is not installed on the equipment, but is related to storage and server equipment purchased, is allowed and may be procured after the initial purchase of the equipment.
 2. Stand-alone Software purchase, including applications ("Apps"), is allowed and shall be negotiated between the Purchasing Entity and the Contractor.
 - b. **Value-Added Services.**
 - Services are broadly classed as installation, de-installation, maintenance, support, minimal operation training, migration, training, and optimization of

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products offered or supplied under the Master Agreement. These types of services are directly related technical support service required for the effective operation of a product offered or supplied;

- Services must be related to the equipment purchase. Additional professional Services, including general consulting, regardless of length of engagement, are not allowed;
- All travel expenses, if applicable, shall be reimbursed under the same conditions and rates as noted in the current published State of Wisconsin Pocket Travel Guide published by the Division of Personnel Management.
- When the Purchasing Entity Order requires a background check prior to providing services, Contractor shall be responsible for meeting any background check requirements. Such background check requirements and the payment of the background checks shall be agreed to in writing between the Purchasing Entity and the Contractor. Purchasing Entity shall have the sole discretion to allow or deny access to any individual providing Contract Services after conducting a background check.

21. **Software License Agreement.** Software subscription terms, the Software License Agreement and/or End User License Agreement (EULA) terms available under this Participating Addendum shall be negotiated between the Purchasing Entity and the Contractor. Unless otherwise negotiated between parties, Software is provided subject to the terms and conditions of the license applicable to such Software. Such terms and conditions shall be consistent and complementary with this Contract. Any transfer of equipment or license agreement purchased from this Contract can be done by a Purchasing Entity without restriction or additional cost to the Purchasing Entity by the Contractor. Please refer to the Contractor page on the NASPO ValuePoint website for a list of the software licenses offered under this addendum.

22. **Title of Product Restrictions.** Notwithstanding anything to the contrary, in the event of any conflict or inconsistency between the terms and any software license, the Order of Precedence apply to the extent any terms of the software license are not in conflict with the Purchasing Entity's applicable governing law.

23. **Substitution.** Contractor will not substitute equipment, products, or Services specified by the Purchasing Entity in an Order. If equipment, products, or Services cannot be supplied and delivered as specified, Contractor shall promptly inform the Purchasing Entity in writing and the Purchasing Entity will be offered the choice of terminating the Order, accepting back order status, or consulting with the Contractor sales representative about selecting alternative goods or Services.

24. **Product Recalls.** In the event Contractor recalls a Contractor branded product, Contractor

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agrees to use diligent efforts to provide written notice to the Participating State's Primary Contact within twenty (20) business days from the date of Contractor's written public announcement of such recall. Such written notice shall identify the Contractor branded product being recalled, the reason for the recall (if applicable), and the process for replacing the recalled Contractor branded product. When such recalled equipment or products that are not Contractor branded products, Contractor agrees to notify the Participating State's Primary Contact within a reasonable time after Contractor's receipt of the Third-Party manufacturer's written recall notice to Contractor, if applicable.

25. **Rush Orders.** Upon request of the Purchasing Entity, Contractor will provide expedited delivery of in-stock equipment in accordance with the Order. Any additional shipping incurred costs above and beyond the already included shipping costs as a result of a rush request shall be quoted and accepted by the Purchasing Entity prior to shipment.
26. **Insurance.** The Contract Vendor is responsible for payment of Contractor contract premiums and deductibles on all insurance policies.
27. **Non-Appropriation of Funds.** The Contractor acknowledges that the Purchasing Entity cannot contract for the payment of funds not yet appropriated. If funding is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the Purchasing Entity may terminate this contract or proportionately reduce the services and purchase obligations from the State upon thirty (30) days written notice. In the case that funds are not appropriated or are reduced, the Purchasing Entity will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the Purchasing Entity will not be liable for any future commitments, penalties, or liquidated damages.
28. **Contractor Compliance and Responsibility for Actions.** The Contractor shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that may affect the Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

29. **Governing Law; Venue.** This Participating Addendum and its amendments and exhibits thereto, shall be governed by Wisconsin Law. Venue for all legal proceedings arising out of the Participating Addendum, or breach thereof, shall be in the State or federal court with competent jurisdiction in Dane County, Wisconsin. In the event that any provision of this Participating Addendum is contrary to Wisconsin law, such provision shall be null and void. The Contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Participating Addendum and which in any manner affect the work or its conduct.

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30. **Nondiscrimination and Affirmative Action.** The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in § 111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post the notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 6, Contract Cancellation herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of a payment due under the Contract until the Contractor is in compliance

Instructions for Contractors regarding Affirmative Action Requirements can be found at <http://vendornet.state.wi.us/vendornet/procman/prod3.pdf>.

31. **Confidential Information.**

- a. **Disclosures.** In connection with the Contractor's performance hereunder, it may be necessary for the Participating State or Purchasing Entity to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

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Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control, including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the State, as directed.

The Contractor shall maintain all such information for a period of six (6) years from the date of termination of this Contract, and shall thereafter return or destroy said information as directed by the State.

b. Equitable Relief in Event of Contractor Breach.

The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

32. **Identification.** All invoices, packing lists, packages, and shipping notices affecting an order hereunder shall contain the applicable State Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by the State, all shipping containers shall be legibly marked or labeled on the outside with State Purchase Order number, product description, and quantity, or as otherwise directed by the State.
33. **Disclosure.** If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Ethics Commission, 212 E Washington Ave # 3, Madison, WI 53703 (Telephone 608-266-8123).
34. **Liens, Claims and Encumbrances.** The Contractor warrants and represents that all Deliverables ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.

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35. **Warranty.** In the event a Third-Party Product manufacturer fails to honor its standard product warranty, Contractor's sole responsibility will be to use its commercially reasonable efforts to provide only those services as defined in the Third-Party Product manufacturer's instrument for the Third-Party Product at issue during the life of the manufacturer's original warranty and subject to all terms, conditions and exclusions in that instrument.
36. **Warranty of Items Offered.** Deliverables and Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of the Purchasing Entity. Deliverables delivered under this Contract are subject to Inspection and testing upon receipt. The Contractor warrants that the Deliverables provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Deliverables offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the Purchasing Entity. Items shall be equal in quality and performance to the standards indicated herein. Deliverables delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the Purchasing Entity its right to recover under any warranties applicable to the Deliverables offered. All warranties made by the Contractor under this Contract shall survive the expiration or termination of the Contract for the original duration of the term of the warranty. The Purchasing Entity and State is not subject to or barred any limitations of actions regarding warranty.
37. **Receipt of Goods.** The Purchasing Entity's receipt of Deliverables upon delivery is for the sole purpose of identification and acceptance of delivery. Such identification shall not be construed as Acceptance of the Deliverables if they do not conform to Specifications. If there are any apparent defects in the Deliverables at the time of delivery, the Purchasing Entity shall promptly notify the Contractor of its rejection of said Deliverables. Without limiting any other rights, the Purchasing Entity warranty includes, at Contractor's option, to:
- a. Repair or replace any or all of the defective and rejected Deliverables at Contractor's expense,
 - b. Refund the price of any or all of the defective and rejected Deliverables, and
 - c. Accept the return of any or all of the defective and rejected Deliverables.

If rejected, the Goods shall remain the property of the Contractor.

38. **Performance.** Services rendered under this Contract shall be performed in a timely, professional and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally recognized organizations establishing quality standards for the type of Services to be rendered hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors render Services, and the

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Contractor shall observe, abide by, and perform all of its obligations in accordance with all applicable legal requirements, and Purchasing Entity's work rules to the extent disclosed and agreed to by Contractor within the Order. Without limiting the foregoing, the Contractor shall control the manner and means of the Services rendered so as to do so in a reasonably safe manner and in compliance with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated within an accepted Order under this Contract shall govern.

39. **Acceptance/Acceptance Testing.** In addition to the Master Agreement, Section 16. d., the Contractor shall not require the Purchasing Entity to sign or electronically accept additional terms and conditions for acceptance or acceptance testing except under a custom Statement of Work that has been mutually agreed to by both parties in writing or as otherwise specified and agreed to within the applicable Order. Such additional terms and conditions for acceptance or acceptance testing shall be consistent and complementary with the terms and conditions of the Contract.
40. **Installation.** If the Contractor is providing installation with the product purchase, Contractor site guidelines required for equipment installation shall be provided the Purchasing Entity prior to Order. Ideally, such site guidelines will be provided at the time of the written quote. In the event such installation requirements were provided by the Contractor to the Purchasing Entity after an Order was placed, the Purchasing Entity has the option to cancel or write a change Order without penalty or additional fees.
41. **Severability.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
42. **Antitrust Assignment.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the Purchasing Entity all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Deliverables or Services purchased or acquired by the Purchasing Entity under this Contract.
43. **State Employees.** The Contractor may not contract with or employ a State employee or an individual retained as a full-time contractor by the State during the term of this Contract.

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44. **Notice and Change of Contact Information.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested. In the event the Contractor moves or updates contact information, the Contractor shall inform the Participating State Primary Contact of such changes in writing within a reasonable period and not to exceed twenty (20) business days. The Purchasing Entity shall not be held responsible for payments on Orders delayed due to the Contractor's failure to provide such notice.
45. **Assignment of Contract.** The Contractor shall provide prior written notice to the State before assigning this Contract to another party. The State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.
46. **Contract Dispute Resolution.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin until the dispute resolution procedure has been utilized and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely. A Party must escalate a dispute or controversy by providing written notice to the other Party. Both Parties agree to attempt to resolve any dispute or controversy in good faith, which includes but is not limited to confidential communications towards dispute resolution. Except as required by law, neither Party nor its representatives may disclose the existence, content, or results of any dispute resolution efforts without the prior written consent of all Parties.
47. **Performance While Dispute is Pending.** Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Agreement that is not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.
48. **No Guarantee of Quantity.** The State may obtain related Goods and Services from other sources during the term of this Contract. The State makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Goods or Services will be procured through this Contract.
49. **Termination of Purchase Order.** The State may terminate a specific Purchase Order issued

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under this Contract if it determines that the Contractor is unable to deliver the Goods required in a timely manner, in order to meet the business needs of the State.

50. **Time is of the Essence.** Timely provision of the Goods or Services required under this Contract shall be of the essence of the Contract, including the provision of the Goods or Services within the time agreed or on a date specified.
51. **No Agency Relationship.** The Contractor shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the Contractor is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.
52. **Other Documents.** The parties to this Contract understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents is not a part of this Contract and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Contract.
53. **Rendering of Services.** The Contractor shall render Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the Purchasing Entity's satisfaction.
- If the Purchasing Entity notifies the Contractor that any part of the Services rendered are inadequate or in any way differ from the Contract requirements for any reason other than as a result of the Purchasing Entity's Default or negligence, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as agreed upon between the Purchasing Entity and Contractor. This remedy shall be in addition to any other remedies available to the State or Purchasing Entity by law or in equity.
54. **Standard of Care.** The Services of Contractor and its Subcontractors shall be performed in accordance with the commercially reasonable standard of care exercised by members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
55. **Security of Premises, Equipment, Data and Personnel.** During the performance of Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to the Purchasing Entity. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of the Purchasing Entity, in accordance with the instruction of the Purchasing Entity as agreed to in writing. The Contractor shall be responsible for damage to the Purchasing Entity's equipment, workplace, and its contents, when such damage or loss is

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caused by the Contractor, Contracted Personnel, or Subcontractors, and shall reimburse the Purchasing Entity accordingly upon demand.

56. Security Incident or Data Breach Notification.

- a. **Incident Response.** Contractor may need to communicate with outside parties regarding a Security Incident which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law, or contained in this Contract. Discussing Security Incidents shall be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
- b. **Security Incident Report Requirements.** Contractor shall report a Security Incident to the Purchasing Entity or designee immediately if Contractor reasonably believes there has been a Security Incident.
- c. **Breach Reporting Requirements.** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall:
 - (a) promptly notify the Purchasing Entity or designee within 24 hours or sooner or as required by applicable law;
 - (b) take commercially reasonable measures to address the Data Breach in a timely manner and
 - (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

57. Data Breach Responsibilities. This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification. In the event of a Data Breach or other event requiring notification, Contractor shall:

- a. cooperate with the Eligible User by sharing information relevant to the Data Breach;
- b. promptly implement necessary remedial measures, if necessary;
- c. document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and
- d. in accordance with applicable laws indemnify, hold harmless, and defend the State of Wisconsin and/or Participating Entity against any claims, damages, or other harm related to such Data Breach.

If the Data Breach requires public notification, all communication shall be coordinated with the Purchasing Entity or designee. Contractor shall be responsible for all notification and remedial costs and damages where Contractor was gross negligent, reckless, or intentional

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conduct.

- 58. Payment Card Industry Data Security Standard and Cardholder Information Security.** Contractor assures all of its Network Components, Applications, Servers, and Subcontractors (if any) that store, process or transmit payment card information for the purchase of products and services under this Agreement comply with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" shall include, but are not limited to, Contractor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances; "Applications" shall include, but are not limited to, all purchased and custom external (web) applications. "Servers" shall include, but are not limited to, all of Contractor's web, database, authentication, DNS, mail, proxy, and NTP servers. "Cardholder Data" shall mean any personally identifiable data associated with cardholder, including, by way of example and without limitation, a cardholder's account number, expiration date, name, address, social security number, or telephone number.

Contractor and Subcontractors (if any) must be responsible for the security of all Cardholder Data in its possession; and will only use Cardholder Data for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law. Contractor must have a business continuity program which conforms to the applicable PCIDSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or system failure which may occur to operations; will continue to safeguard Cardholder Data in the event this Agreement terminates or expires; and ensure that a representative or agent of the payment card industry and a representative or agent of the State shall be provided with full cooperation and access to conduct a thorough security review of Contractor's operations, systems, records, procedures, rules, and practices in the event of an security intrusion in order to validate compliance with PCIDSS.