

# STATE OF NEBRASKA SERVICE CONTRACT AWARD

State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: (402) 471-6500  
Fax: (402) 471-2089

**CONTRACT NUMBER**  
**90612 04**

PAGE 1 of 1	ORDER DATE 12/22/20
BUSINESS UNIT 65060014	BUYER DIANNA GILLILAND (AS)
VENDOR NUMBER: 1189381	
VENDOR ADDRESS:  T-MOBILE USA INC 12920 SE 38TH ST BELLEVUE WA 98006-1350	

AN AWARD HAS BEEN MADE TO THE VENDOR/CONTRACTOR NAMED ABOVE FOR THE SERVICES AS LISTED BELOW FOR THE PERIOD:

**JANUARY 01, 2021 THROUGH JUNE 30, 2024**

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR/CONTRACTOR AND THE STATE OF NEBRASKA.

Originally awarded from NASPO ValuePoint Contract MA #176

Contract to supply and deliver Wireless Communication Services and Equipment to State of Nebraska agencies and political subdivisions for the period January 1, 2021 through June 30, 2024.

Payment: 45 days

Purchase Orders for State Agencies, Boards and Commissions for Wireless Communication Services and Equipment must be processed by Administrative Services, Office of the OCIO. Political subdivisions are responsible for processing a purchase order directly with the contractor.

(For the File - This RFP and Contract are bid and awarded by the State of Utah. All backup bids, etc. are retained by the Utah Division of Purchasing and General Services).

(For the File: The NASPO ValuePoint/T-Mobile USA, Inc. Master Price Agreement contract period was effective July 1, 2019. The NASPO ValuePoint/ T-Mobile USA, Inc. Participating Addendum for Nebraska became effective on January 1, 2021).

Vendor Contact: David Bezzant  
Phone: 602-512-5006  
Email: david.bezzant@t-mobile.com

(12/22/20 sc)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price	Extended Price
1	WIRELESS COMMUNICATION SERVICES AND EQUIPMENT	75,000.0000	EA	1.0000	75,000.00
<b>Total Order</b>					<b>75,000.00</b>

DocuSigned by:  
*Dianna Gilliland* 12/28/2020  
F7A5A82E15DE428  
DocuSigned by:  
*Dianna Gilliland* 12/29/2020  
6F1A26D9C1D448C1...  
BUYER  
MATERIEL ADMINISTRATOR

**PARTICIPATING ADDENDUM  
UNDER THE  
NASPO VALUEPOINT  
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT  
MASTER AGREEMENT NUMBER: MA176  
CONTRACTOR: T-Mobile USA, Inc.**

**PARTICIPATING ENTITY: State of Nebraska  
Contract Number: 90612 O4**

This Participating Addendum (the "PA" or "Contract") is **effective January 1, 2021** (the "PA Effective Date"), between the State of Nebraska ("Participating Entity"), and T-Mobile USA, Inc. ("Contractor"). Participating Entity and Contractor are, at time, referred to individually as a "Party" or together as the "Parties".

**1. Scope:** This Participating Addendum ("PA") covers the NASPO ValuePoint Wireless, Data, Voice and Accessories Master Agreement led by the State of Utah (Master Agreement No: MA176) for use by state agencies and other entities, as provided in the Master Agreement, and as more specifically detailed in Paragraph 2, "Participation," below. There were four categories included in the solicitation:

- Category 1: Cellular Wireless Services
- Category 2: Equipment and Accessories
- Category 3: Turnkey Wireless and IoT Solutions offered as a Product
- Category 4: Alternative Wireless Transport Options

Contractor was awarded Categories 1, 2, 3A, and 3C.

Participating Entity has elected to participate in All Awarded Categories.

**2. Participation:** This PA may be used by all state agencies, institutions of higher education, political subdivisions and other entities, as defined in Neb. Rev. Stat. § 810 145 as authorized Purchasing Entities under the Agreement. It will be the responsibility of the Purchasing Entity to comply with any legal or regulatory provisions applicable to the Purchasing Entity. A Purchasing Entity may issue individual releases (Purchase Orders) against this PA on an as-needed basis.

**3. Participating Entity Supplemental Terms:** Participating Entity supplemental terms are attached hereto as Exhibit A.

**4. Order of Precedence:** Except as specifically provided otherwise herein, this PA consists of and precedence is established by the order of the following documents: (a) the PA; and (b) the Master Agreement (including the Master Agreement Order of Precedence established in the NASPO ValuePoint Master Terms and Conditions).

**5. Administrative Fee and Reporting:**

**5.1 Administrative Fee/Rebate**

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one-quarter of one percent

(0.25% or 0.0025) the net sales (net of any returns, credits, or adjustments) under this Addendum for the period. Payments shall be made in accordance with following schedule:

<b>Period End</b>	<b>Fee Due</b>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

5.1.1 Administrative Fee/Rebate Remittance Location

All administrative fees/rebates will be sent to the following address:

State Purchasing Bureau  
c/o Central Finance, Administrative Services  
1526 K Street, Suite 240  
Lincoln, NE 68508

5.1.2. Reports

The Contractor agrees to provide a utilization report, reflecting new sales to the State during the requested period, less any credits. The report will be provided in secure electronic Excel format and submitted electronically to the State as listed below.

The Contractor shall provide to the State of Nebraska the reports containing at a minimum the following information pertaining to State of Nebraska agencies, boards, commissions, and political subdivisions utilization:

Ordering Entity  
Purchase order number;  
Description;  
Quantity; and  
Price.

Excel Quarterly Reports shall be emailed to:  
Nebraska State Purchasing Bureau  
Contract #90612  
Dianna Gilliland, Buyer III  
[Dianna.gilliland@nebraska.gov](mailto:Dianna.gilliland@nebraska.gov)

**6. Purchase Order Instructions:** Participating Entity must issue purchase orders hereunder that reference both Master Agreement #MA176 and the Nebraska State Contract 90612 O4. Upon issuance of any such valid purchase order, Participating Entity will be bound by the terms and conditions of the Agreement including, without limitation, the obligation to pay Contractor for Service, Equipment, and related Products provided. Notwithstanding the foregoing, any purchase order submitted that does not properly reference the Master Agreement number and/or the PA may be accepted, at Contractor's sole discretion, if Contractor can reasonably ascertain that such Purchase Order was properly authorized and intended for use with the PA. In such instances the corresponding Purchase Order will be similarly valid and binding. Except as expressly provided in the Agreement, terms and

conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement will not be added to or incorporated into the Agreement by any Purchase Order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement will prevail and govern in the case of any such inconsistent or additional terms.

**7. Individual Customer:** Each state agency, political subdivision or other entity placing an order under this Participating Addendum (“Purchasing Entity”), will be treated as if it was an individual Customer. Except to the extent modified by the 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.

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

Contractor

Name:	David Bezzant, Vice President, T-Mobile For Government
Address:	c/o T-Mobile USA, Inc., 12920 SE 38 <sup>th</sup> Street, Bellevue, WA 98006
Telephone:	(480) 638-2608
Email:	<a href="mailto:David.Bezzant@T-Mobile.com">David.Bezzant@T-Mobile.com</a>
For Legal Notice to Contractor – send copy to:	Legal Department, T-Mobile USA, Inc. c/o T-Mobile USA, Inc. 12920 SE 38 <sup>th</sup> Street, Bellevue, WA 98006

Participating Entity

Name:	Dianna Gilliland, Buyer III
Address:	1526 K Street, Suite 130, Lincoln, NE 68502
Telephone:	402-601-5239
Email:	<a href="mailto:Dianna.gilliland@nebraska.gov">Dianna.gilliland@nebraska.gov</a>

**9. Software Terms and Conditions:** Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software; however, in the event of a conflict in language between an end user license agreement (EULA) and the Master Agreement, the language in the Master Agreement will supersede and control. In addition, any language in a EULA which violates a Purchasing Entity’s constitution, statute or other applicable law will be deemed void, and of no force or effect, as applied to the Purchasing Entity.

**10. Entire Agreement:** Master Agreement and this Participating Addendum sets forth the entire agreement between the Parties with respect to its subject matter, and it supersedes all

previous communications, representation or agreements, whether oral or written, with respect thereto.

**11.** Pursuant to Amendment No. 2 of Master Agreement No. MA176, upon execution of this PA, the Parties agree that the terms of any existing Participating Addendum(s) under either: 1) the NASPO ValuePoint Master Agreement #1907 between the State of Nevada and Contractor (“T-Mobile NASPO 1907 Agreement”); or 2) the NASPO ValuePoint Master Agreement #1907 between the State of Nevada and Sprint Solutions, Inc., (“Sprint NASPO 1907 Agreement”) will be governed under the terms of this PA and Master Agreement No. MA176. Contractor and the Participating Entity agree that this PA will supersede and replace any existing Participating Addendum(s) under either T-Mobile NASPO 1907 Agreement or Sprint NASPO 1907 Agreement (“Existing 1907 Participating Addendums”) as of the PA Effective Date, subject to the terms herein. The Existing 1907 Participating Addendums will be terminated in their entirety as of the PA Effective Date.

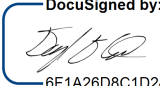
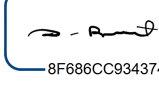
**12. Technology Evolution:**

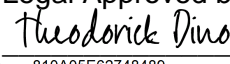
12.1 In the normal course of technology evolution and enhancement, T-Mobile continually updates and upgrades its Services, Products and networks. In some instances, these efforts will result in the need to ultimately replace or discontinue certain offerings or technologies. In such event, T-Mobile will undertake such efforts in a customer-focused and commercially reasonable manner. Accordingly and notwithstanding anything in the PA to the contrary, T-Mobile reserves the right, in its sole discretion, after providing the notice set forth in subsection 12.2 below, to: (a) migrate Participating Entity to a replacement technology; or (b) discontinue any Service, Product, network standard, or technology without either party being in breach of the PA or incurring early termination liability relating to the discontinuance of the affected Service, Product, network standard, or technology.

12.2 If T-Mobile takes any action set forth in subsection 12.1 above, T-Mobile will provide no less than 60 days’ advance notice reasonably designed to inform Participating Entity (if affected) of such pending action. The form of T-Mobile’s notice must be written and provided to the impacted Participating Entity and may include providing written notice to any address (a) listed in the PA for Participating Entity, (b) T-Mobile uses for billing, or (c) set forth in an Order. Customer agrees that such notice is reasonable and sufficient notice of T-Mobile’s pending action.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties have executed the PA as of the PA Effective Date.

Participating Entity: State of Nebraska	Contractor: T-Mobile USA, Inc.
Signature:  DocuSigned by: 6F1A26D8C1D24BC	Signature:  DocuSigned by: 8F686CC9343743C...
Printed Name: Doug Carlson	Printed Name: David Bezzant
Title: AS Materiel Administrator	Title: Vice President, T-Mobile For Government
Date: 12/29/2020	Date: 12/17/2020

Legal Approved by:  
  
DocuSigned by:  
810A05E62748489... 12/17/2020  
T-Mobile USA, Inc. Legal Department

## **PARTICIPATING ENTITY SUPPLEMENTAL TERMS EXHIBIT A**

### **I. TERMS AND CONDITIONS**

#### **A. BUYER'S REPRESENTATIVE**

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities which shall include required written notices to and consents provided by the Buyer to Contractor to enable the Buyer's Representative to access and handle Buyer's account information, including, but not limited to, customer proprietary network information ("CPNI"). If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document, and is required to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

#### **B. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

#### **C. BEGINNING OF WORK**

The contractor shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

#### **D. AMENDMENT**

This Contract may be amended in writing, within scope, upon the agreement of both parties.

#### **E. CHANGE ORDERS OR SUBSTITUTIONS**

The State and the Contractor, upon mutual written agreement, may make changes to the contract within the general scope of the solicitation. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated

value, or through negotiations as mutually agreed to by the Parties. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

In the event any product is discontinued or replaced upon mutual consent during the contract period or prior to delivery, the Parties may amend the contract or purchase order to include the alternate product at a price agreed to by the Parties.

**F. VENDOR PERFORMANCE REPORT(S)**

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. The State Purchasing Bureau may contact the Vendor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Vendor.

**G. NOTICE OF POTENTIAL CONTRACTOR BREACH**

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**H. SEVERABILITY**

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

**I. ATTORNEY'S FEES**

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all reasonable expenses of such action, as permitted by law and if ordered by the court, including reasonable attorney's fees and costs, if the other Party prevails.

**J. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE**

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this Participating Addendum. The terms and conditions, including price, of the Participating Addendum may not be amended. The State shall not be contractually obligated or liable for any Participating Addendum entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**K. EARLY TERMINATION**

The Contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the Contract at any time.
2. The State, in its sole discretion, may terminate the Contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve



the Contractor of warranty or other service obligations incurred under the terms of the Contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided up to the effective date of the termination.

3. The State may terminate the Contract immediately for the following reasons:
  - a. If directed to do so by statute;
  - b. Subject to applicable law, Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. Subject to applicable law, a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. Subject to applicable law, an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. Contractor intentionally discloses confidential information;
  - g. Contractor has or announces it will discontinue support of the deliverable; and,
  - h. In the event funding is no longer available.
4. Subject to applicable law, the State may terminate the Contract immediately if a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;

**L. CONTRACT CLOSEOUT**

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State (subject to Section II Subsection F below);
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this Contract;
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this Contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

## II. CONTRACTOR DUTIES

### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the contractor's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this Contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this Contract.

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this solicitation.

**D. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. Destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

**E. PERMITS, REGULATIONS, LAWS**

The Contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the Contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the Contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this Contract.

**F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

The State's rights in the products and services provided under this Contract shall be for purposes of the State's internal business only (which includes use by third parties doing business with the State, to the extent contemplated in this Contract) during the term of this Contract. All other intellectual property rights in the products and services remain in and/or are assigned to Contractor. Where software is provided with a product or service, the State is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable the State to use the products and services in accordance with the applicable licensing requirements. The Parties shall cooperate with each other and execute such documents as may be deemed reasonably necessary to achieve the objectives of this provision. In no event shall Contractor be precluded from developing for itself, or for others, products, services, or materials that are competitive with, or similar to, the products and services provided under this Contract. In addition, Contractor shall be free to use its general knowledge, skills, and experience, and any ideas, concepts, know-how, and techniques within the scope of its business practices that are used in the course of providing the products and services to the State.] Nothing in this Contract shall be construed to convey or transfer the property of the State to the Contractor.

**G. INSURANCE REQUIREMENTS**

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within five (5) years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and five (5) years following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits required under this Contract of the insurance policies required herein.

**1. WORKERS' COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such

operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>PROFESSIONAL LIABILITY</b>	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
<b>COMMERCIAL CRIME</b>	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
<b>CYBER LIABILITY</b>	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$10,000,000
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall include the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

**3. EVIDENCE OF COVERAGE**

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Nebraska State Purchasing Bureau  
Contract #MA-176/#90614 O4  
Attn: Dianna Gilliland  
[Dianna.gilliland@nebraska.gov](mailto:Dianna.gilliland@nebraska.gov)

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**4. DEVIATIONS**

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

If Contractor breaches the Contract or anticipates breaching the Contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the Contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**I. ANTITRUST**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State; provided, however, Contractor will assign such claims to the State to the extent the State can demonstrate that it has either (1) paid monies not otherwise due or (2) received less compensation than it would otherwise have been entitled to receive as a result of violations of federal or state antitrust laws.

**J. CONFLICT OF INTEREST**

By entering into the Participating Addendum, Contractor certifies, to the best of its knowledge, that no relationship exists between the Contractor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Contract .

Contractor further certifies that Contractor will not employ any individual known by bidder to have a conflict of interest nor shall Contractor knowingly take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

**K. ADVERTISING**

The Contractor agrees not to refer to the Contract in advertising in such a manner as to state or imply that the company or its goods or services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**L. DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods and services as specified under the specifications in the contract in the event of a disaster.

**M. DRUG POLICY**

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**N. WARRANTY**

See NASPO ValuePoint Master Agreement No: MA176, Section 17. Warranty.

**III. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

Neb. Rev. Stat. §§81-2403 states, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”

**B. TAXES (Statutory)**

The State is not required to pay sales taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

**E. PAYMENT (Statutory)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

**G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

**H. RIGHT TO AUDIT (First Paragraph is Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. §84-304 et seq.) The State may audit and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.