



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000005960
Gartner, Inc.
56 Top Gallant Road
Stamford, CT 06902

Contact: Christopher Ragan
Email: Chris.Ragan@gartner.com
Telephone No.: 916-420-1860

Number: 00-00000-19-00075AF

Amendment No.: One

Term: February 2, 2021 - June 5, 2022

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.

Procurement Specialist: Travis Dutton-Leyda *JD*

Telephone No.: 505-795-1076

Email: travis.dutton-leyda@state.nm.us

Invoice:
As Requested

Title: **Procurement of Acquisition Support Services (PASS)**

This amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from June 6, 2021 to June 5, 2022 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Valerie Paulk
Valerie Paulk, New Mexico State Purchasing Agent

Date: 6/22/2021

X **This Agreement was signed on behalf of the State Purchasing Agent**



State of New Mexico General Services Department

Statewide Price Agreement Cover Page

Awarded Vendor:
000005960
Gartner, Inc.
56 Top Gallant Road
Stamford, CT 06902

Contact: Christopher Ragan
Email: Chris.Ragan@gartner.com
Telephone No.: 916-420-1860

Price Agreement Number: 00-00000-19-00075AF

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Travis Dutton-Leyda *JD*

Telephone No.: 505-827-0477

Email: travis.dutton-leyda@state.nm.us

Invoice:
As Requested

Title: Procurement of Acquisition Support Services (PASS)

Term: February 2, 2021 thru June 5, 2021

This Statewide Price Agreement is made subject to the “terms and conditions” as indicated on the attached Participating Addendum.

NASPO ValuePoint Link:

<https://www.naspovaluepoint.org/portfolio/procurement-acquisition-support-services-2019-2024/>

NASPO ValuePoint
PARTICIPATING ADDENDUM



**PROCUREMENT OF ACQUISITION
 SUPPORT SERVICES (PASS)**

Led by the State of **Hawaii**

Master Agreement #: 19-19-06

New Mexico SWPA #: 00-00000-19-00075AF

Contractor: **GARTNER, INC.**

Participating Entity: **STATE OF NEW MEXICO**

The following services are included in this contract portfolio:

<https://www.naspovaluepoint.org/portfolio/procurement-acquisition-support-services-2019-2024/>

MASTER AGREEMENT TERMS AND CONDITIONS:

1. **Scope:** This addendum covers the *Procurement of Acquisition Support Services (PASS)* led by the State of *Hawaii* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

| | |
|------------|---|
| Name: | Chris Ragan |
| Address: | 56 Top Gallant Road, Stamford, CT 06902 |
| Telephone: | 916-420-1860 |
| Email: | chris.ragan@gartner.com |

Participating Entity

To the Participating State:

| | |
|------------|--|
| Name: | Travis Dutton-Leyda |
| Address: | 1100 St. Francis Dr., Room 2016, Santa Fe, NM 87505 |
| Telephone: | (505) 827-0477 |
| Email: | travis.dutton-leyda@state.nm.us |

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.
 The following changes are modifying or supplementing the Master Agreement terms and conditions.

SEE: PA Attachment A - State of New Mexico NASPO Terms

5. Lease Agreements:
Reserved
6. Subcontractors: All contractors, dealers, and resellers authorized in the State of *New Mexico*, 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.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a 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.

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

| | |
|---|-------------------------------------|
| Participating Entity: New Mexico | Contractor: GARTNER, INC. |
| Signature: <i>Valerie Paulk</i> | Signature: <i>Scott Lyon</i> |
| X This PA was signed on behalf of the State Purchasing Agent | |
| Name: Mark Hayden | Name: Scott Lyon |
| Title: State Purchasing Agent | Title: Director Legal Affairs |
| Date: 2/2/2021 | Date: January 29, 2021 |

NASPO ValuePoint

For questions regarding NASPO ValuePoint Participating Addendums, please contact the NASPO ValuePoint Cooperative Contract Coordinator team at:

ccc@naspovlauepoint.org

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

PA Attachment A - State of New Mexico NASPO Terms

8. **Taxes:** The Contractor shall be reimbursed by the Participating State for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE PARTICIPATING STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Participating State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

9. **Retainage:**
Reserved

10. **Performance Bond:**
Reserved

11. **Term:** THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE NEW MEXICO STATE PURCHASING AGENT, IF REQUIRED. This Agreement shall begin on a date approved by the New Mexico State Purchasing Agent, if the New Mexico State Purchasing Agent has signed this Agreement, and end on June 5, 2021. The Participating State reserves the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of 10 years in accordance with NMSA 1978 §13-1-150.

12. **Termination:**

- a) Grounds. The Participating State may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Participating State's uncured, material breach of this Agreement.
- b) Notice; Participating State Opportunity to Cure.
- (1) Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Participating State shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
- (2) Contractor shall give Participating State written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Participating State's material breaches of this Agreement upon which the termination is based and (ii) state what the Participating State must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Participating State does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Participating State does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
- (3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to provide the Goods or perform the Services contracted for, as determined by the Participating State; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the New Mexico State

Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

13. Appropriations: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Participating State to the Contractor. The Participating State's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

14. Status of Contractor: The Contractor and its agents and employees are independent contractors providing Goods and/or performing professional or general services for the Participating State and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

15. Conflict of Interest; Governmental Conduct Act:

- a) The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b) The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - (1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Participating State employee while such employee was or is employed by the Participating State and participating directly or indirectly in the Participating State's contracting process;
 - (2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the Participating State; (ii) the Contractor is not a member of the family of a public officer or employee of the Participating State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the Participating State, a member of the family of a public officer or employee of the Participating State, or a business in which a public officer or employee of the Participating State or the family of a public officer or employee of the Participating State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
 - (3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Participating State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the Participating State whose official act, while in the

Participating State's employment, directly resulted in the Participating State's making this Agreement;

- (4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
 - (5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - (6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Participating State.
- c) Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Participating State relied when this Agreement was entered into by the Parties. Contractor shall provide immediate written notice to the Participating State if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Participating State and notwithstanding anything in the Agreement to the contrary, the Participating State may immediately terminate the Agreement.
- d) All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

16. Amendment:

- a) This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto and all other required signatories.
 - b) If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.
17. **Merger:** This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.
18. **Penalties for violation of law:** The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.
19. **Equal Opportunity Compliance:** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining

to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

20. **Workers Compensation:** The Contractor agrees to comply with the Participating State's laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Participating State.
21. **Applicable Law:** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.
22. **Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
23. **Enforcement of Agreement:** A Party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.
24. **Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Participating State.
25. **Notices:** Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Participating State:

| | |
|------------|--|
| Name: | Mark Hayden, State Purchasing Director, State Purchasing Division |
| Address: | 1100 St. Francis Dr., Room 2016, Santa Fe, NM 87505 |
| Telephone: | (505) 827-0472 |
| Email: | mark.hayden@state.nm.us |

To the Contractor:

| | |
|------------|---|
| Name: | Gartner Inc. |
| Address: | 56 Top Gallant Road, Stamford, CT 06902 |
| Telephone: | 571-303-3469 |
| Contact: | Scott Lyon |
| Email: | scott.lyon@gartner.com |

26. **Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the Parties.
27. **Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
28. **Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Purchasing Entity and the State of New Mexico may procure the Goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Purchasing Entity and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.
29. **Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Participating State irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Participating State, and the Contractor consents to the Participating State's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Participating State's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the Participating State may have under applicable law, including, but not limited to, monetary damages.
30. **New Mexico Employees Health Coverage:**
- a) If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Participating State exceed \$250,000.
 - b) Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the Participating State.
 - c) Contractor agrees to advise all employees of the availability of Participating State's publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com/>.
31. **Warranty:** a) The STATE warrants that CONTRACTOR's use of any materials furnished by the STATE in connection with a Statement of Work does not infringe any copyright, trademark, trade secret or other right of any third party. (b) CONTRACTOR warrants that the Deliverables, in the form provided to the STATE, do not infringe any copyright, trademark, trade secret or other right of

any third party. (c) ALL SERVICES ARE PROVIDED ON AN “AS IS” BASIS. CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE INFORMATION IN THE DELIVERABLES HAS BEEN OBTAINED FROM SOURCES THAT CONTRACTOR BELIEVES TO BE RELIABLE. ALL DELIVERABLES SPEAK AS OF THE DATE OF DELIVERY TO THE STATE.

32. **Limitation of Liability:** Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages. Except for liability for personal injury or death or for damage to property caused by the negligence or willful misconduct of CONTRACTOR or its employees, CONTRACTOR’s total liability arising out of this Agreement and the provision of the Services shall be limited to the fees paid by the STATE under the specific Statement of Work under which such liability arises.
33. **Ownership of Deliverables:** Notwithstanding the requirements set forth in Solicitation, CONTRACTOR shall assign to STATE ownership of any project Deliverable(s) originally created for and submitted to the State, provided, however, that CONTRACTOR may use, reproduce, display and distribute excerpts and data from the deliverables, either alone or together with other material, in the ordinary course of CONTRACTOR’s business, so long as such excerpts and data do not identify STATE by name or contain any of the STATE’s confidential or proprietary information, and provided further that CONTRACTOR retains all right, title and interest in and to its processes, benchmarking data and data collection tools, assessment models and pertinent methodologies such as Strategic Planning, Contractor’s copyrighted proprietary research and other pre-existing materials and data, such as Data Collection Templates and Survey Tools for Applications and Infrastructure, and benchmark comparisons (“Preexisting Intellectual Property”). Nothing contained in this Agreement shall preclude CONTRACTOR from rendering services to others or developing work products that are competitive with, or functionally comparable to, the Services. CONTRACTOR shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that CONTRACTOR shall not use or disclose any of STATE’s confidential information.
34. **Preexisting Materials:** STATE shall retain its rights in any proprietary material that STATE supplies to CONTRACTOR. If the STATE provides CONTRACTOR with materials owned or controlled by STATE or with use of, or access to, such materials, the STATE grants to CONTRACTOR all rights and licenses that are necessary for CONTRACTOR to fulfill its obligations under each Statement of Work. CONTRACTOR grants to STATE for internal purposes only a worldwide, royalty-free, perpetual license to use, reproduce, display, distribute copies of, and prepare derivative works of any CONTRACTOR “Preexisting Intellectual Property” embodied in the Deliverables.
35. **Audit:** In the event the STATE or its authorized agents carry out an audit or investigation that relates to this contract, the CONTRACTOR undertakes to fully cooperate and facilitate the audit and/or investigation work and at the request of STATE, provide STATE or its authorized agents with access to the CONTRACTOR’s personnel as well as any information and documents that may be required in connection with such audit and/or investigation. Should such audit and/or investigation determine that any funds paid by STATE have been paid in error per the terms of the Contract; the CONTRACTOR shall reimburse such funds forthwith. Where the CONTRACTOR fails to reimburse such funds, STATE reserves the right to seek recovery and/or to take any other action as it deems necessary.

36. **General Indemnity:** The CONTRACTOR shall indemnify, defend and hold harmless the STATE and its affiliate Agencies, and their respective employees, and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorney's fees and court costs) relating to bodily injury, death or dismemberment of any person or damage to any real and/or tangible personal property directly caused by the negligence or willful misconduct of the CONTRACTOR, its personnel, or agents during the course of the provision of Services under this Agreement.
37. **Intellectual Property Indemnification:** Upon notification of a claim against STATE alleging any Contract Deliverable infringes a copyright, patent or trade secret of any third party, CONTRACTOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against STATE. CONTRACTOR will not indemnify STATE however, if the claim of infringement is caused by (1) STATE's misuse or modification of the Deliverable; (2) STATE's failure to use corrections or enhancements made available by CONTRACTOR; (3) STATE's use of the Deliverable in combination with any product or information not owned or developed by CONTRACTOR (4) Information direction, specification or materials provided by STATE. If any Deliverable is, or in CONTRACTOR's opinion is likely to be, held to be infringing, CONTRACTOR shall at its expense and option either: (a) procure the right for STATE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing, or (d) direct the return of the Deliverable and refund to STATE the fees paid for such Deliverable.
38. **Confidentiality:** (a) The parties agree to keep confidential and not to use or disclose to any third parties any non-public business information of the other party learned or disclosed in connection with services provided pursuant to this Agreement and any amendments thereto, including the CONTRACTOR Materials. The obligation of the parties with respect to the Confidential Information shall terminate with respect to any particular portion of the Confidential Information if and when: (i) it is in the public domain at the time of its communication; (ii) it is developed independently by the receiving party without use of any confidential information; (iii) it enters the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication to the receiving party; (iv) it is in the receiving party's possession free of any obligation of confidence at the time of the disclosing party's communication; (v) it is communicated by the disclosing party to a third party free of any obligation of confidence; or (vi) the receiving party has the disclosing party's written permission.
- (b) Each party shall provide notice to the other of any demand made upon it under lawful process to disclose or provide any of the other party's confidential information. The receiving party agrees to cooperate with the disclosing party, at the disclosing party's expense, if the disclosing party elects to seek reasonable protective arrangements or oppose such disclosure. Any confidential information disclosed pursuant to such lawful process shall continue to be confidential information.
39. **Default and Force Majeure:** The Purchasing Entity reserves the right to cancel all or any part of any Orders placed under this Agreement without cost to the Purchasing Entity, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Participating State and/or the Purchasing Entity due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the Order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Participating State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Participating State provided in

this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

40. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Participating State.
41. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Participating State. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Participating State.
42. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Participating State, its officers and employees and Procuring Entity from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
43. **Contractor Personnel:**
 - a) Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Participating State. Key personnel are those individuals considered by the Participating State to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Gartner Staffing will be determined at the time of each authorized engagement.
 - b) Gartner Staffing will be determined at the time of each authorized engagement. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Participating State. For all personnel, the Participating State reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Agreement is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to the Participating State's approval. The Participating State, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Agreement. The Contractor shall also make interim arrangements to assure that the Agreement progress is not affected by the loss of personnel. The Participating State reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Participating State, meeting the Participating State's expectations.
44. **Incorporation by Reference and Precedence:** In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) this Participating Addendum; (2) the Master Lease Agreement, if applicable; and (3) the NASPO ValuePoint Master Agreement.
45. **Inspection of Services:** If this Agreement is for the purchase of services, the following terms shall apply.
 - a) Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

- b) The Contractor shall provide and maintain an inspection system acceptable to the Participating State covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Participating State during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
- c) The Participating State has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Participating State shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- d) If the Participating State performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- e) If any part of the services do not conform with the requirements of this Agreement, the Participating State may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Participating State may:
 - (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
 - (2) reduce the Agreement price to reflect the reduced value of the services performed.
- f) If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Participating State may:
 - (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Participating State that is directly related to the performance of such service; or
 - (2) terminate the Agreement for default.

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

46. **Insurance:** If the Services contemplated under this Agreement will be performed on or in Participating State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.
- a) Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.
 - b) Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
 - (1) Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 - (2) Property damage or combined single limit coverage: \$1,000,000.
 - (3) Automobile liability (including non-owned automobile coverage): \$1,000,000.
 - (4) Umbrella: \$1,000,000.
 - c) Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

47. **Arbitration:** Any controversy or claim arising between the Parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

48. **New Mexico Administrative Reporting and Fees:** All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **one percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. **“Gross total sales”** means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows.

| | | |
|----------|--------------|-------------|
| Quarter: | Period End: | Report Due: |
| First | September 30 | October 31 |
| Second | December 31 | January 31 |
| Third | March 31 | April 30 |
| Fourth | June 30 | July 31 |

Even if Contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the “State Purchasing Division”. This contract number 00-00000-19-00075AF must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
 1100 St. Francis Drive, Room 2016
 PO Box 6850
 Santa Fe, NM 87505
 Attn: Compliance Officer

Sample Reports can be found at:
<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.

49. **Lease Agreements:**
 Reserved

50. **Subcontractors:** All Contactors, Authorized Dealers, and resellers authorized in the State of New Mexico, 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 this Participating Addendum and the aforementioned Master Agreement.

Certificate Of Completion

| | |
|--|---------------------------------|
| Envelope Id: 93CFA84E4DAC4DF093C80DF654B27BCD | Status: Completed |
| Subject: NASPO PA 00-00000-19-00075AF | |
| Source Envelope: | |
| Document Pages: 13 | Signatures: 1 |
| Certificate Pages: 5 | Initials: 2 |
| AutoNav: Enabled | Envelope Originator: |
| Envelopeld Stamping: Enabled | Travis Dutton-Leyda |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | 13 Bataan Blvd |
| | Santa Fe, NM 87508 |
| | travis.dutton-leyda@state.nm.us |
| | IP Address: 67.164.144.62 |

Record Tracking

| | | |
|--------------------------------------|---------------------------------|--------------------|
| Status: Original | Holder: Travis Dutton-Leyda | Location: DocuSign |
| 2/2/2021 4:42:12 PM | travis.dutton-leyda@state.nm.us | |
| Security Appliance Status: Connected | Pool: StateLocal | |
| Storage Appliance Status: Connected | Pool: GSD | Location: DocuSign |

Signer Events

| Signature | Timestamp |
|--|---|
| Travis Dutton-Leyda travis.dutton-leyda@state.nm.us IT & Construction Bureau Chief New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign | Sent: 2/2/2021 4:45:41 PM Viewed: 2/2/2021 4:45:51 PM Signed: 2/2/2021 4:46:08 PM |

| | | |
|---|---|---|
| Valerie Paulk valerie.paulk@state.nm.us State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff |  Signature Adoption: Pre-selected Style Using IP Address: 75.161.86.101 Signed using mobile | Sent: 2/2/2021 4:45:41 PM Viewed: 2/2/2021 5:14:12 PM Signed: 2/2/2021 5:14:35 PM |
|---|---|---|

| | | |
|--|---|---|
| Vanessa LeBlanc Vanessa.LeBlanc@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/2/2020 7:02:26 AM ID: 174ce339-a45c-4eb9-8489-b3f5ced3d8e4 |  Signature Adoption: Pre-selected Style Using IP Address: 174.237.2.34 | Sent: 2/2/2021 4:45:41 PM Viewed: 2/3/2021 7:02:40 AM Signed: 2/3/2021 7:03:11 AM |
|--|---|---|

| In Person Signer Events | Signature | Timestamp |
|------------------------------|-----------|-----------|
| Editor Delivery Events | Status | Timestamp |
| Agent Delivery Events | Status | Timestamp |
| Intermediary Delivery Events | Status | Timestamp |

| Certified Delivery Events | Status | Timestamp |
|----------------------------------|---------------|------------------|
|----------------------------------|---------------|------------------|

| Carbon Copy Events | Status | Timestamp |
|---------------------------|---------------|------------------|
|---------------------------|---------------|------------------|

| Witness Events | Signature | Timestamp |
|-----------------------|------------------|------------------|
|-----------------------|------------------|------------------|

| Notary Events | Signature | Timestamp |
|----------------------|------------------|------------------|
|----------------------|------------------|------------------|

| Envelope Summary Events | Status | Timestamps |
|--------------------------------|---------------|-------------------|
|--------------------------------|---------------|-------------------|

| | | |
|---------------------|------------------|---------------------|
| Envelope Sent | Hashed/Encrypted | 2/2/2021 4:45:41 PM |
| Certified Delivered | Security Checked | 2/3/2021 7:02:40 AM |
| Signing Complete | Security Checked | 2/3/2021 7:03:11 AM |
| Completed | Security Checked | 2/3/2021 7:03:11 AM |

| Payment Events | Status | Timestamps |
|-----------------------|---------------|-------------------|
|-----------------------|---------------|-------------------|

| Electronic Record and Signature Disclosure |
|---|
|---|

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.