

State of Colorado



John W. Hickenlooper
Governor

Kathy Nesbitt
Executive Director

Jennifer Okes
Deputy Executive Director

Carol Pfarr
Division Director

Judson Byrn
State Purchasing Director

DPA

Department of Personnel
& Administration

Division of Finance and Procurement
State Purchasing Office
633 17th Street, Suite 1520
Denver, Colorado 80202-3609
(303) 866-6100
Fax (303) 866-6016
www.colorado.gov/dpa


Paul Mash, Asst. Director
Purchasing and General Services
PO BOX 141061
Salt Lake City, UT 84114-1061

Dear Paul,

Enclosed please find your fully executed original of the assignment of the SciQuest, Inc. Master Agreement by NASPO and the State of Colorado in favor of the State of Utah.

We deeply appreciate your efforts in this matter.

Thank you,


Judson Byrn,
State Purchasing Director

CONTRACT ASSIGNMENT AND ASSUMPTION

This CONTRACT ASSIGNMENT AND ASSUMPTION, by and between the State of Colorado and the National Association of State Procurement Officials, Inc. ("NASPO") (hereinafter collectively referred to as "Assignors" and individually as "Assignor"), and the State of Utah (hereinafter referred to as "Assignee"), in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, WITNESSETH:

WHEREAS, Colorado and NASPO, on its own behalf and on behalf of the Western States Contracting Alliance (hereinafter referred to as "WSCA"), entered into a certain Master Agreement for eProcurement Services (Hosted Software-as-a-Service), effective June 30, 2011 (hereinafter referred to as "Contract"), with SciQuest, Inc. (hereinafter referred to as "Obligor");

WHEREAS, the Contract has an expiration date of June 30, 2016 and may be extended as permitted therein;

WHEREAS, Assignors wish to assign all of their respective rights and obligations under the Contract to Assignee;

WHEREAS, NASPO has the right to assign its rights and obligation under the Contract to Assignee without the consent of the other parties to the Contract; and

WHEREAS, the WSCA Directors, consisting of the Chief Procurement Officials of each of the WSCA member states, have consented in writing to the assignment of the Contract by Colorado to Assignee, in accordance with Section XXVI.A.ii. of the Contract.

NOW THEREFORE, Assignors and Assignee agree as follows:

1. This Contract Assignment and Assumption shall be effective on the last date upon which the last of the parties, the WSCA Directors, and the Colorado State Controller have set forth their signatures below.
2. Each Assignor hereby transfers and assigns to Assignee all of its respective right, title, and interest, and all of its obligations, responsibilities and duties, in and to the Contract and upon such transfer, Assignors shall have no further rights or obligations thereunder, except as may be set forth in any separate Purchasing Documents, as defined in the Contract, entered into by an Assignor on its own behalf.
3. Assignee hereby accepts the assignment of all of Assignors' respective right title and interest in and to the Contract and assumes and agrees to perform all of Assignors' obligations, responsibilities and duties thereunder.

4. Within thirty (30) days of the effective date of this Contract Assignment and Assumption, Assignors shall provide notice of the transfer to the other parties to the Contract, in accordance with XXV. thereof.
5. Each Assignor and Assignee agree to execute and deliver from time to time, upon reasonable request, any further documents as may be necessary to give full effect to the intent and meaning of this Contract Assignment and Assumption.

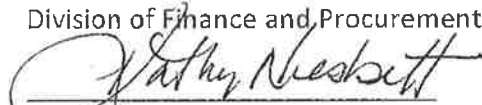
IN WITNESS WHEREOF, the parties hereto have executed this Contract Assignment and Assumption as of the dates set forth below.

Assignors:

STATE OF COLORADO

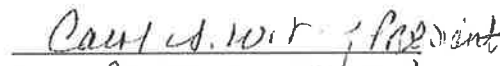
John Hickenlooper, GOVERNOR
Department of Personnel & Administration,
Division of Finance and Procurement

Dated: 4/30/13


By: Kathy Nesbitt, Executive Director

NATIONAL ASSOCIATION OF STATE
PROCUREMENT OFFICIALS, INC.

Dated: 4/26/13


By: CAROL S. WILSON

Assignee: STATE OF UTAH

Dated: 4/25/13


By: Paul Mash

This Page is a Continuation of the CONTRACT ASSIGNMENT AND ASSUMPTION, by and between the State of Colorado and the National Association of State Procurement Officials, Inc. ("NASPO") (hereinafter collectively referred to as "Assignors" and individually as "Assignor"), and the State of Utah (hereinafter referred to as "Assignee")

Acknowledged and consented to:

WSCA Directors

Kent Beers, Board of Director Chair

By: Kent D Beers

Date: 4/25/13

Approved:

Colorado State Controller

David J. McDermott, CPA

By: David J McDermott

Date: 4-30-13

**MASTER AGREEMENT FOR ePROCUREMENT SERVICES
(Hosted Software-as-a-Service)**

by and among

SciQuest, Inc.

and

The State of Colorado

The National Association of State Procurement Officials, Inc.
on its own behalf and on behalf of

The Western States Contracting Alliance

WSCA/NASPO Agreement #W33-2010

State of Colorado CMS #33858

State of Colorado Price Agreement #92004YYY01M/WSCA

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Attachment BB	(Contractor's Response)

THIS MASTER SERVICES AGREEMENT FOR ePROCUREMENT SERVICES (Hosted Software-as-a-Service) (this "**Master Agreement**") is entered into by and among SciQuest, Inc., a Delaware corporation ("**Contractor**"), and the National Association of State Procurement Officials, Inc. ("**NASPO**"), for itself and on behalf and for the benefit of the Western States Contracting Alliance ("**WSCA**"), and the State of Colorado, acting by and through the State Purchasing Office, Department of Personnel and Administration ("**Lead State**"). Each of the Contractor, NASPO, WSCA, and Lead State individually shall be referred to herein as a "**Party**" and collectively, as the "**Parties.**"

- A. WHEREAS**, NASPO is a non-profit association made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia, and the territories of the United States;
- B. WHEREAS**, WSCA, a NASPO affiliate, is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities) for the states of Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming;
- C. WHEREAS**, pursuant to §24-110-201, Colorado Revised Statutes, the Chief Procurement Official, as defined in §II below, of Lead State is authorized to enter into a cooperative group-contracting consortium;
- D. WHEREAS**, Contractor provides electronic procurement services and support through hosted Software-as-a-Service computer programs; and
- E. WHEREAS**, Contractor, NASPO, WSCA, and Lead State wish to enter into a multi-state cooperative agreement for the creation of a multi-state centralized electronic procurement system and the provision of related services to NASPO, WSCA, their participating members, including Lead State, and other entities approved by their participating members.

NOW THEREFORE, in consideration of the premises, covenants, and mutual promises contained in this Master Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

I. Effective Date

This Master Agreement shall not be enforceable until it has been (i) executed by the Parties, (ii) approved by the WSCA Directors, as defined in §II below, as conclusively evidenced by their written approval hereof, and (iii) approved and signed by the Colorado State Controller (the "Effective Date"). The Parties shall not be bound and Contractor shall not be entitled to receive payment or reimbursement for any performance hereunder, including but not limited to, costs or expenses incurred prior to the Effective Date.

II. Definitions

- A. Defined Terms.** The following terms as used herein shall be construed and interpreted as follows:

"Additional Term" means any additional or renewal term of any Participating Addendum or Affiliate Agreement following the expiration of the initial term or a previous Additional Term of such Participating Addendum or Affiliate Agreement.

"Affiliate" means a Political Subdivision, Non-Government Entity, Institution of Higher Education, or State Agency authorized by the laws and the Chief Procurement Official of the State of a Participating Entity to purchase Services pursuant to an Affiliate Agreement. An Affiliate purchasing Services or Subscriptions under an Affiliate Agreement is an Authorized Purchaser.

"Affiliate Agreement" means a bilateral agreement between an Affiliate and Contractor, issued under and incorporating the terms and conditions of a Participating Addendum, substantially in the form of **Exhibit G** (Form of Affiliate Agreement), and the exhibits and attachments thereto, setting forth the different or additional terms and conditions applicable to purchases by an Affiliate under the Participating Addendum.

"Authorized Purchaser" means a Participating Entity, a State Agency, or an Affiliate purchasing Subscriptions and/or Services under a Purchasing Document.

"Authorized Purchaser Data" means all Confidential Information of an Authorized Purchaser and other data generated, uploaded or transmitted by an Authorized Purchaser using the Contractor Applications.

"Chief Procurement Official" means the head of the centralized procurement authority of a WSCA/NASPO Member. The Chief Procurement Official for the Lead State is the Director of State Purchasing, Colorado Department of Personnel and Administration.

"Confidential Information" means Government Entity Confidential Information, Non-Government Entity Confidential Information, and/or Contractor Confidential Information, each as defined in **§XIV** of this Master Agreement.

"Contractor Application" means on-demand, web-based software hosted and operated by Contractor on computer servers and made available to Authorized Purchasers over the Internet by Subscription.

"Contractor Documentation" means all documents, other than Deliverables under a Service Order, and any and all operator's and user's manuals, training materials, guides and other materials for use in connection with and for the operation of Subscriptions and/or Services that are to be delivered by Contractor under a Service Order.

"Contractor's Response" means Contractor's response to the RFP, dated December 17, 2010, including its Best and Final Offer, dated April 28, 2011, as set forth in **Attachment BB**.

"CRS" means the Colorado Revised Statutes.

"Deliverable" means a Service, document, or material that Contractor is required to deliver to an Authorized Purchaser under a Service Order, including, but not limited to, formal plans for communication, risk management, change management, program management, and

performance management and other written materials, as set forth in a Service Order.

“Effective Date” is defined in §I of this Master Agreement.

“End User” means an employee, agent, representative, or subcontractor of an Authorized Purchaser who is authorized by the Authorized Purchaser to use a Contractor Application and for whom Contractor has issued a user identification and password. A Supplier providing supplier data to Contractor for use in an electronic catalog is not an End User.

“Exhibit” means any of the following exhibits and attachments attached hereto and incorporated by reference herein: **Exhibit A** (WSCA Terms and Conditions); **Exhibit B** (Form of Participating Addendum); **Exhibit C** (Support and Maintenance Services); **Exhibit D** (Supplier Enablement Services); **Exhibit E** (Form of Statement of Work); **Exhibit F** (Form of Order Form); **Exhibit G** (Form of Affiliate Agreement); **Exhibit H** (Form of Option Letter); **Exhibit I** (Current Pricing and Discounts); **Attachment AA** (Request for Proposal #RFP-TS-00003-11); and **Attachment BB** (Contractor’s Response).

“Government Entity” means a state, the District of Columbia, or a territory of the United States or a State Agency, Institution of Higher Education, or Political Subdivision.

“Initial Term” means the original five (5) year term of this Master Agreement.

“Institution of Higher Education” means an institution of higher education established and supported by the laws of a state in such manner as may be prescribed by law.

“Master Agreement” means this Master Agreement for eProcurement Services (Hosted Software-as-a-Service), its terms and conditions, exhibits and attachments, documents incorporated by reference under the terms of this Master Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law and Fiscal Rules, and State Controller Policies.

“Non-Government Entity” means a non-profit, cooperative or other entity, other than a State Agency, Institution of Higher Education, or Political Subdivision, authorized under the laws and approved by the Chief Procurement Official of a WSCA/NASPO Member, to participate in cooperative contracts and to make purchases under a Purchasing Document.

“Notice” means a written notice required under this Master Agreement, delivered in accordance with §XXV (Notices and Representatives) below.

“Order Form” means the ordering document, substantially in the form of **Exhibit F** (Form of Order Form), pursuant to which an Authorized Purchaser shall purchase and Contractor shall provide Subscriptions and/or Services. All Subscriptions to Contract Applications will be purchased under Order Forms.

“Participating Addendum” means a bilateral agreement executed by a Participating Entity and Contractor, substantially in the form of **Exhibit B** (Form of Participating Addendum), and the exhibits and attachments thereto, incorporating by reference the terms and conditions of this Master Agreement

and setting forth the different or additional terms and conditions applicable to purchases by Authorized Purchasers under the Participating Addendum.

"Participating Entity" means WSCA, NASPO, or a WSCA/NASPO Member that has executed a Participating Addendum. A State Agency, Institution of Higher Education or Political Subdivision authorized by a WSCA/NASPO Member to enter into a Participating Addendum in lieu of the WSCA/NASPO Member also is a Participating Entity. A Participating Entity ordering Subscriptions and/or Services under a Service Order also is an Authorized Purchaser.

"Political Subdivision" means a political subdivision of a WSCA/NASPO Member as defined under the laws applicable to such WSCA/NASPO Member.

"Professional Services" means implementation, training, consulting, data migration, conversion, integration, technical support, and/or other services provided by Contractor pursuant to an SOW.

"Purchasing Document" means a Participating Addendum, an Affiliate Agreement, or a Service Order.

"Renewal Term" means an additional five (5) year term of this Master Agreement following the expiration of the Initial Term or a previous renewal term, as authorized under an Option Letter, substantially in the form of **Exhibit H** (Form of Option Letter).

"RFP" means that certain Request for Proposal for eProcurement Services #RFP-TS-00003-11, issued on behalf of the State of Colorado, the Western States Contracting Alliance and other Authorized Entities, dated October 15, 2010, as modified by Modification #1, dated November 10, 2010, Modification #2, dated November 25, 2010, Modification #3, dated December 3, 2010, and Modification #4, dated December 3, 2010.

"Service Level Agreement" or "SLA" means the minimum levels of performance contained in **Exhibit C** (Support and Maintenance Services) in areas that include, but are not necessarily limited to support services, help desk hours and incident response times. SLAs for metrics specific to the Services or Subscriptions purchased under a Purchasing Document will be contained in the Purchasing Document.

"Service Order" means a bilateral agreement between Contractor and an Authorized Purchaser, issued under a Participating Addendum or an Affiliate Agreement, consisting of an Order Form and/or a SOW, and the exhibits and attachments thereto. A Service Order incorporates by reference the terms and conditions of the Participating Addendum or Affiliate Agreement under which it is issued.

"Services" means the Support and Maintenance Services, Supplier Enablement Services, Professional Services, and such other services as may be contemplated under this Master Agreement.

"Specifications" means technical and other specifications set forth in this Master Agreement, Purchasing Documents, and the specifications set forth in the Contractor Documentation provided by Contractor prior to, concurrently with, or after the Effective Date.

“State Agency” means any department or agency of a WSCA/NASPO Member, not including Political Subdivisions and Institutions of Higher Education.

“Statement of Work” or “SOW” means a separate statement of work, substantially in the form of **Exhibit E** (Form of Statement of Work), agreed upon by Contractor and an Authorized Purchaser, which sets forth the respective obligations of the parties under a Service Order. Services will be purchased pursuant to a Statement of Work.

“Subcontractor” means a third-party engaged by Contractor to aid in performance of Contractor’s obligations. International Business Machines Corporation, a New York corporation, and Binary Fountain, Inc., a Virginia corporation, have been engaged to serve as Subcontractors under this Master Agreement. Additional Subcontractors may be approved by a Participating Entity in a Participating Addendum or by an Affiliate in an Affiliate Agreement.

“Subscription” means the right to access and use a Contractor Application during a Subscription term set forth in a Service Order, and includes, but is not limited to, the right to access and use any new feature functionality, enhancements, and other changes, which are logical improvements to a Contractor Application that Contractor makes generally available on a commercial basis, without charge, to any other subscriber of the Contractor Application during the term of the Subscription, together with all Contractor Documentation provided by or otherwise required for such access and use.

“Subscription Fees” means the fees payable by an Authorized Purchaser for a Subscription, in accordance with **Exhibit I** (Current Pricing and Discounts), as set forth in the applicable Order Form.

“Supplier” is defined in **Exhibit D** (Supplier Enablement Services) to this Master Agreement.

“Supplier Enablement Services” means the services provided by Contractor to an Authorized Purchaser and its Suppliers to enable the Suppliers to incorporate their respective product information and pricing into an electronic catalog, as more fully described in **Exhibit D** (Supplier Enablement Services).

“Support and Maintenance Services” means the maintenance, hosting and support services provided by Contractor in connection with a Contractor Application, as more fully described in **Exhibit C** (Support and Maintenance Services).

“WSCA Directors” means the Chief Procurement Officials of the WSCA states.

“WSCA/NASPO Contract Administrator” means the individual selected by WSCA and NASPO from time to time to administer this Master Agreement.

“WSCA/NASPO Member” means a state, the District of Columbia, or a territory of the United States.

- B.** Additional Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in **Exhibit C** (Support and

Maintenance Services), **Exhibit D** (Supplier Enablement Services), or **Exhibit E** (Form of Statement of Work).

III. Transaction Documents

- A. Master Agreement. This cooperative Master Agreement sets forth the terms and conditions pursuant to which WSCA, NASPO, or a WSCA/NASPO Member may enter into a Participating Addendum for the purchase of Subscriptions and Services authorized under this Master Agreement.
- B. Participating Addendum. A WSCA/NASPO Member wishing to participate in this cooperative Master Agreement shall do so by entering into a Participating Addendum with Contractor, substantially in the form of **Exhibit B** (Form of Participating Addendum). A Participating Addendum requires the written approval of the WSCA/NASPO Contract Administrator. The Participating Addendum incorporates by reference the terms and conditions of this Master Agreement and sets forth the specific terms and conditions applicable to Authorized Purchasers purchasing under the Participating Addendum. A Participating Addendum clarifies the operation of the Master Agreement for the parties to the Participating Addendum. The scope of a Participating Addendum shall not exceed the scope of this Master Agreement. A Participating Addendum shall have an initial term of five (5) years or as otherwise provided in the Participating Addendum. Unless provided to the contrary in a Participating Addendum, the Participating Entity may renew the term of its Participating Addendum for one additional term of five (5) years during each renewal term of this Master Agreement, provided that the total of the initial term and all renewal terms of a Participating Addendum shall not exceed fifteen (15) years in the aggregate. In the event the Master Agreement expires or otherwise is terminated prior to the expiration or termination of a Participating Addendum (i) the Participating Addendum shall remain in full force and effect for the remainder of its then current term, but shall not be renewed for any subsequent terms and (ii) the terms of this Master Agreement shall continue to be incorporated by reference into such Participating Addendum and shall remain in full force and effect solely for such purposes. A Participating Entity wishing to purchase Subscriptions and/or Services from Contractor shall do so by the issuance of one or more Service Orders under its Participating Addendum.
- C. Affiliate Agreement. An Affiliate wishing to purchase Services under a Participating Addendum shall do so by entering into an Affiliate Agreement with Contractor, in accordance with terms and conditions of the Participating Addendum under which it is issued. An Affiliate Agreement sets forth the specific terms and conditions applicable to the Affiliate and clarifies the operation of the Affiliate Agreement for the parties to the Affiliate Agreement. An Affiliate Agreement is subject to and incorporates the terms and conditions of the Participating Addendum under which it is issued; provided, however, that the Affiliate shall be solely responsible for its obligations under the Affiliate Agreement and the Participating Entity shall have no liability with respect thereto. Each Affiliate Agreement shall have a term of five (5) years or as otherwise provided in the Participating Addendum under which it is issued. Unless provided to the contrary in such Participating Addendum, an Affiliate may renew the term of its Affiliate Agreement for one additional term of five (5) years during

each renewal term of the Participating Addendum under which it is issued, provided, that the total of the initial term and all renewal terms of an Affiliate Agreement shall not exceed fifteen (15) years in the aggregate. In the event a Participating Addendum expires or otherwise is terminated prior to the expiration or termination of an Affiliate Agreement (i) the Affiliate Agreement shall remain in full force and effect for the remainder of its then current term, but shall not be renewed for any subsequent renewal terms and (ii) the terms of the Participating Addendum shall continue to be incorporated by reference into such Affiliate Agreement and shall remain in force and effect solely for such purposes. An Affiliate may purchase Services and Subscriptions under an Affiliate Agreement by the issuance of one or more Service Orders.

- D. Service Order. An Authorized Purchaser wishing to purchase Services and Subscriptions under a Participating Addendum or an Affiliate Agreement shall do so by entering into one or more Service Orders with Contractor, in accordance with the terms and conditions of the Participating Addendum or Affiliate Agreement under which the Service Order is issued. A Service Order shall consist of an Order Form and/or a SOW executed by the Authorized Purchaser and Contractor, which expressly incorporates and is governed by the terms and conditions of the Participating Addendum or Affiliate Agreement under which it is issued. A Service Order shall specify the Subscriptions and/or Services purchased under the Service Order. A Service Order and any additions or amendments thereto shall be accomplished as provided in the Participating Addendum or Affiliate Agreement under which the Service Order is issued. The scope or term of a Service Order shall not exceed the scope or term of the Participating Addendum or Affiliate Agreement under which it is issued. If permitted under applicable law, the term of a Service Order may extend beyond the expiration or sooner termination of the Participating Addendum or Affiliate Agreement under which it is issued, but shall not be renewed or extended after the expiration or sooner termination of the term or any renewal term of such Participating Addendum or Affiliate Agreement.

IV. Term and Early Termination

- A. Initial Term. The Initial Term of this Master Agreement shall commence on the Effective Date and shall terminate on the fifth (5th) year anniversary of the Effective Date, unless extended or sooner terminated as specified herein.
- B. Option to Extend. The term of this Master Agreement may be renewed by the Parties for up to two (2) Renewal Terms of five (5) years each on the same terms and conditions and subject to the same discounts set forth herein; provided, however, that the pricing to which such discounts shall be applied during any renewal term shall be as set forth in **§IX** (Pricing and Payment) below. The total duration of this Master Agreement, including the exercise of all options under this section, shall not exceed fifteen (15) years in the aggregate. If WSCA, NASPO, and Lead State wish to exercise this option, the WSCA/NASPO Contract Administrator shall provide Notice to Contractor at least sixty (60) days prior to the end of the then current term or renewal term of the Master Agreement, in form substantially equivalent to **Exhibit H** (Form of Option Letter). If Contractor agrees to the renewal, Contractor shall sign and return a copy of such Option Letter to the WSCA/NASPO Contract Administrator and the provisions of the

Option Letter shall become part of and be incorporated into this Master Agreement.

- C. Extension of Participating Addenda. During any Renewal Term of this Master Agreement, a Participating Entity may renew the term of its Participating Addendum, as provided in such Participating Addendum, on the terms and conditions and subject to the adjustments set forth herein and in the Option Letter creating the Renewal Term.
- D. Early Termination. In the event the term or any renewal term of this Master Agreement terminates for any reason prior to its stated expiration date, (i) each Participating Addendum currently in effect at the time of such termination shall remain in effect for the outstanding term of such Participating Addendum in accordance with **§III(B)** above. A Participating Addendum shall not be renewed following the termination or expiration of this Master Agreement.

V. **Phased Implementation**

Contractor shall provide the Subscriptions and Services contemplated under this Master Agreement pursuant to the specifications set forth herein, in individual Participating Addenda and Affiliate Agreements and in the Service Orders issued thereunder. Implementation of this Master Agreement shall be performed in the following three (3) phases:

- A. Phase 1. Phase 1 shall be performed under a Participating Addendum between Contractor and WSCA, pursuant to which Contractor shall design and implement the Cooperative Market Center of the States ("CMCS"), a web-hosted "shopping cart" style electronic catalog containing the products available under WSCA contracts, as described in the applicable Service Order. The CMCS shall be available for use by all WSCA/NASPO Members, and by those parties authorized to purchase under WSCA/NASPO contracts, through their current systems without the installation of any proprietary software, integration or interface. The CMCS shall meet the requirements set forth in this Master Agreement and the Participating Addendum between WSCA and Contractor. Phase 1 shall be implemented concurrently with Phase 2 described in **§V(B)** below.
- B. Phase 2. Phase 2 shall be performed under individual Participating Addenda between Contractor and each of the states of Colorado, Nevada, Oregon and Washington (the "Core States"), pursuant to which Contractor shall configure and implement Contractor Applications for each of the Core States. The Participating Addendum between Contractor and Lead State shall be executed concurrently with the execution of this Master Agreement and shall be implemented concurrently with Phase 1 described in **§V(A)** above. Following the effective date of the Participating Addendum with Lead State, each of the other Cores States may enter into an individual Participating Addendum setting forth the terms and conditions applicable to such Core State.
- C. Phase 3. The WSCA Directors, in their sole discretion, may extend the opportunity to participate in this Master Agreement to other WSCA/NASPO Members at any time. Individual Participating Addenda with other

WSCA/NASPO Members may be executed in phases consistent with the readiness of such other WSCA/NASPO Members.

VI. Standard of Performance

- A. Performance. Contractor shall perform all of its obligations hereunder in accordance with the standards of care, skill and diligence customary in Contractor's industry, trade, or profession and in the sequence and manner set forth herein and in each Purchasing Document.
- B. Standards. Upon written request, Contractor shall provide to the WSCA/NASPO Contract Administrator or to the designated representative of an Authorized Purchaser, a copy of the most recent SAS 70 Report of the control objectives and control activities of Contractor's North Carolina operations. When available, and upon written request of the WSCA/NASPO Contract Administrator or the designated representative of an Authorized Purchaser, Contractor shall provide to the WSCA/NASPO Contract Administrator or an Authorized Purchaser representative, a copy of the Statement on Standards for Attestation Engagements No. 16 Report ("SSAE 16 Report") of Contractor's North Carolina operations. The attestation standard for reporting on Contractor and other similar organizations is transitioning from SAS 70 to SSAE 16.

VII. Subscriptions and Services

- A. Subscriptions.
- i. Grant of License. Upon the payment by an Authorized Purchaser of the required Subscription Fees under an Order Form, Contractor shall grant to such Authorized Purchaser and such Authorized Purchaser shall accept, for the Subscription term set forth in such Order Form, a non-exclusive, non-transferable license to use and access through the Internet, solely for Authorized Purchaser's procurement activities in the ordinary course of business, the Contractor Applications set forth in such Order Form. Any rights not granted to an Authorized Purchaser hereunder or under an applicable Order Form shall be reserved to Contractor.
- ii. Access and Use. Access and use of Contractor Applications under an Order Form shall be limited to the number of End Users set forth in such Order Form. Each Authorized Purchaser shall register user names and passwords for all of its End Users through the applicable Contractor Application. A single user name and password shall not be used by more than one End User. Authorized Purchasers shall not perform any load testing with respect to the Contractor Applications without Contractor's prior written consent. Contractor reserves the right to audit its own records for the purpose of determining whether Authorized Purchasers are in compliance with the obligations under this **§VII(A)(ii)**.
- iii. Accuracy of Information. Each Authorized Purchaser shall, and shall direct its registered End Users to, use commercially reasonable efforts to support the accuracy, legality, and appropriateness of information

uploaded and business transacted in connection with the Contractor Applications.

- iv. Restrictions. Authorized Purchasers shall not permit persons or entities other than End Users to use the Contractor Applications and shall not use the Contractor Applications on behalf of such persons or entities. Other than with respect to WSCA/NASPO Members, an entity, organization, division or unit that is not integrated into an Authorized Purchaser's financial management system shall not be considered to be a part of such Authorized Purchaser, and an Authorized Purchaser shall not designate End Users on behalf of any such entity, organization, division or unit or otherwise use the Contractor Applications on behalf of any such entity, organization, division or unit. With respect to any WSCA/NASPO Member that is an Authorized Purchaser, no Affiliate (other than a State Agency) of a WSCA/NASPO Member shall be considered to be a part of such WSCA/NASPO Member, and such WSCA/NASPO Member shall not designate End Users on behalf of any Affiliate (other than a State Agency). An Authorized Purchaser shall not rent, lease, sublicense, grant a security interest in, or otherwise transfer its right to use and possess a Contractor Application, in whole or in part.
- v. Noncompliance. The failure of an Authorized Purchaser to comply with any provision of this **§VII(A)** with respect to a Contractor Application shall constitute a material breach of the Service Order under which the Contractor Application was licensed.

B. Services.

- i. Support and Maintenance Services. Contractor shall provide the maintenance and support services set forth in **Exhibit C** (Support and Maintenance Services) to this Master Agreement during the term of each Subscription purchased under a Service Order, including but not limited to help desk support services provided by Contractor staff speaking English as a first language and with experience in resolving issues for all implemented functionality.
- ii. Supplier Enablement Services. Contractor shall provide the Supplier Enablement Services set forth in **Exhibit D** (Supplier Enablement Services) to each Authorized Purchaser as provided in a Service Order.
- iii. Modifications. Contractor, from time to time and in its sole discretion, may modify the Support and Maintenance Services and/or the Supplier Enablement Services; provided that such modification shall apply to all of Contractor's customers equally. If such modification would materially diminish the Services provided to an Authorized Purchaser, Contractor shall provide the WSCA/NASPO Contract Administrator and such Authorized Purchaser at least sixty (60) days prior Notice identifying the proposed modification and the proposed effective date thereof. A modification that materially diminishes the Services provided to an Authorized Purchaser shall not be implemented by Contractor without the consent of such Authorized Purchaser. All modifications shall be

applicable to all outstanding Service Orders on the same basis. A material diminishment of the Support and Maintenance Services without the consent of an Authorized Purchaser shall constitute a breach of this Master Agreement and of such Authorized Purchaser's Purchasing Documents, subject to the provisions of **§XXI (Breach)** below.

- iv. Professional Services. Contractor shall provide the Professional Services set forth in a Service Order in accordance with the terms thereof and the terms and conditions of the Participating Addendum or Affiliate Agreement under which such Service Order is issued.
- C. Acceptance. An Authorized Purchaser shall accept or reject the Services and Deliverables provided under a SOW in accordance with the acceptance or rejection criteria set forth in the SOW.
- D. Affiliates. Contractor shall make Services and Subscriptions available to Affiliates on the same basis it makes them available to Authorized Purchasers under a Participating Addendum.
- E. Termination. Upon termination or expiration of a Service Order: (i) Contractor shall terminate the Authorized Purchaser's access to all Contractor Applications and cease providing Services to the Authorized Purchaser; (ii) the Authorized Purchaser shall immediately cease any and all use of and access to any Contractor Applications; (iii) each party to the Service Order receiving Confidential Information of the other party shall return all such Confidential Information in its possession to the disclosing party; and (iv) Contractor shall electronically transmit all Authorized Purchaser Data to the Authorized Purchaser in accordance with **§VII(F)** below.
- F. Transition Assistance. Upon expiration or termination of all or a part of the Subscriptions or Services being provided under a Service Order, Contractor shall electronically transmit all Authorized Purchaser Data to the Authorized Purchaser under the Service Order in the manner set forth in the applicable Purchasing Documents. If the Purchasing Documents fail to specify the manner of electronic transmission, all Authorized Purchaser Data shall be transmitted in accordance with Contractor's standard export protocols. Upon successful transfer of all Authorized Purchaser Data to the Authorized Purchaser, Contractor shall delete such Authorized Purchaser Data from Contractor's servers and will provide a written affidavit, signed by a Contractor executive, confirming that such Authorized Purchaser Data has been removed from Contractor's servers.

VIII. Specifications

The Subscriptions and Services provided by Contractor under this Master Agreement shall comply with the requirements and specifications set forth in this Master Agreement. In addition, the Subscriptions and Services provided to an individual Authorized Purchaser shall comply with the requirements and specifications set forth in the Purchasing Documents to which the Authorized Purchaser is a party. Contractor's failure to meet the requirements or specifications of a Service Order shall constitute a breach of such Service Order. Service requirements and specifications shall include, but are not limited to the following:

- A. Functional Requirements. Contractor's Subscriptions and Services shall meet the functional requirements set forth set forth in §4.2.1 of and Exhibit F (Functional Requirements) to **Attachment AA** (Request for Proposal) in all material respects, except as otherwise provided in Appendix 1 to **Attachment BB** (Contractors' Response).
- B. Service and Support Requirements. Contractor shall offer the Services and shall meet the service, support, and maintenance requirements set forth in §4.2.2 of **Attachment AA** (Request for Proposal) in all material respects, except as otherwise provided in Appendix 1 to **Attachment BB** (Contractors' Response), including without limitation, implementation Services, training Services and live Help Desk support.
- C. Technical Requirements. Services and Subscriptions provided by Contractor shall meet the technical requirements set forth in §4.2.3 of **Attachment AA** (Request for Proposal) in all material respects, except as otherwise provided in Appendix 1 to **Attachment BB** (Contractors' Response), including, but not limited to architecture, security, maintenance and upgrades,
- D. Implementation Requirements. Implementation requirements shall be provided in each individual Service Order, providing the distinct set of implementation tasks required to accomplish a specific end result and including the implementation requirements set forth in §4.2.4 of **Attachment AA** (Request for Proposal), as applicable.
- E. Service Level Agreements. The Subscriptions and Services provided by Contractor to an Authorized Purchaser shall meet the Service Level Agreements set forth in **Exhibit C** (Support and Maintenance Services) and such other Service Level Agreements as may be set forth in a Service Order or other applicable Purchasing Document.
- F. Authorized Purchaser Systems. The provision of Services and Subscriptions by Contractor, as contemplated in this Master Agreement, does not require access by Contractor to the computer systems or servers of Authorized Purchasers and such access is not authorized under this Master Agreement.

IX. Pricing and Payment

- A. Initial Terms Of Participating Addenda and Affiliate Agreements.
 - i. First Twelve Month Period. For each Participating Addendum or Affiliate Agreement entered into by Contractor and a Participating Entity or Affiliate, as applicable, during the first twelve (12) month period of the Initial Term, Contractor shall provide Subscriptions and Services to the Authorized Purchasers under such Participating Addenda or Affiliate Agreements at the rates set forth in **Exhibit I** (Current Pricing and Discounts), subject to discount as set forth in **Exhibit I**, The rates applicable to the Participating Addendum or Affiliate Agreement at the time of its execution shall remain fixed during the entire initial term of the Participating Addendum or Affiliate Agreement.

- ii. Subsequent Twelve Month Periods. Prior to the commencement of each subsequent twelve (12) month period of the Initial Term and each Renewal Term of this Master Agreement, Contractor may increase the rates charged for Services and Subscriptions to Authorized Purchasers under Participating Addenda or Affiliate Agreements entered into by Contractor and a Participating Entity during such twelve (12) month period; provided, that (a) Contractor shall provide prior Notice of any increase to the WSCA/NASPO Contract Administrator at least thirty (30) days prior to the commencement of such twelve (12) month period, and (b) the increase for any twelve (12) month period shall not exceed five percent (5%) of the rates charged by Contractor during the previous twelve (12) month period, and (c) the rate of increase for any twelve (12) month period shall not exceed the applicable rate of increase in Contractor's list prices for the Contractor Applications. The rates applicable to a Participating Addendum or Affiliate Agreement at the time of its execution shall remain fixed during the entire initial term of the Participating Addendum or Affiliate Agreement.
- B. Additional Terms of Participating Addendum or Affiliate Agreement. The rates applicable to any Additional Term shall be no more than one hundred ten percent (110%) of the price for the immediately preceding initial term or Additional Term of the applicable Participating Addendum or Affiliate Agreement.
- C. Payments. Contractor shall initiate a payment request by submitting an invoice to an Authorized Purchaser in the form and manner set forth in the Purchasing Documents under which the payment is requested. Payments may be made through the use of a procurement card, state warrant, or other method agreed to by the parties to the applicable Purchasing Documents. Advance payments allowed under Purchasing Documents between Contractor and a Government Entity shall comply with the laws, rules, requirements and policies applicable to the Government Entity.
- D. Interest. Authorized Purchasers shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the Authorized Purchaser. Uncontested amounts not paid by an Authorized Purchaser within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one (1) percent per month, or such lower rate as may be authorized by the laws of the WSCA/NASPO Member applicable to the Authorized Purchaser; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice an Authorized Purchaser separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.
- E. Travel Expenses. Contractor shall be entitled to reimbursement for travel expenses, as identified in a Purchasing Document or approved in advance in writing by the Authorized Purchaser, at the then current reimbursement amounts approved for the Authorized Purchaser's own employees, in accordance with the rules and regulations of the Authorized Purchaser. Contractor shall provide a

detailed itemization of expenses, including descriptions, amounts and dates, and receipts as required by the rules and regulations of the Authorized Purchaser.

- F. Non-Appropriation. If state or federal funds are used to fund a Service Order between Contractor and a Government Entity, in whole or in part, the performance of the Government Entity under such Service Order shall be contingent upon the continuing availability of such funds, in accordance with the governmental laws, rules and regulations applicable to such Government Entity and as set forth in the applicable Purchasing Documents. If state or federal funds are not appropriated, or otherwise become unavailable to fund a Service Order, the Government Entity may terminate the Service Order immediately, without further liability, in accordance with the terms of this Master Agreement, the Service Order, and applicable Purchasing Documents.
- G. Erroneous Payments. At the discretion of an Authorized Purchaser, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under a Purchasing Document or other contracts, grants, or agreements between Contractor and the Authorized Purchaser, or by other appropriate methods and collected as a debt due to such Authorized Purchaser. Such funds shall not be paid to any person or entity other than the Authorized Purchaser.

X. Subscription and Service Warranty

- A. Contractor Applications. Contractor warrants that for the entire term of each Contractor Application Subscription: (i) the Contractor Application media provided to the Authorized Purchaser shall be free from defects in materials and workmanship under normal use and (ii) each Contractor Application shall perform substantially in accordance with and as specified in this Master Agreement and in the Purchasing Documents under which the Subscription is purchased. Contractor does not warrant that the functions contained in a Contractor Application will meet the requirements of an Authorized Purchaser (unless such requirements have been specified in this Master Agreement or in the Purchasing Documents under which the Contractor Application is licensed) or that the Contractor Applications will operate uninterrupted or error free.
- B. Limited Warranty. THE WARRANTY SET FORTH ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY CONTRACTOR WITH RESPECT TO THE CONTRACTOR APPLICATIONS AND THE SERVICES LICENSED HEREIN. EXCEPT AS EXPRESSLY SET FORTH IN THIS MASTER AGREEMENT OR IN ANY PURCHASING DOCUMENT, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR TITLE, AND CONTRACTOR HEREBY DISCLAIMS THE SAME.
- C. Exceptions. CONTRACTOR'S WARRANTY OBLIGATIONS SHALL NOT APPLY TO A CONTRACTOR APPLICATION IF THE FAILURE OF SUCH

CONTRACTOR APPLICATION TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS IS CAUSED BY: (i) THIRD PARTY SOFTWARE LICENSED OR OTHERWISE USED BY AUTHORIZED PURCHASER, OTHER THAN THIRD PARTY SOFTWARE PROVIDED OR RECOMMENDED BY CONTRACTOR; (ii) AUTHORIZED PURCHASER'S USE OF, OR ACCESS TO, THE CONTRACTOR APPLICATION OTHER THAN AS SET FORTH IN THIS MASTER AGREEMENT OR ANY PURCHASING DOCUMENT; OR (iii) UNAUTHORIZED MODIFICATIONS MADE TO THE CONTRACTOR APPLICATION BY AN AUTHORIZED PURCHASER.

XI. Rights in Data, Documents and Computer Software

- A. Licenses.** This Master Agreement contemplates the licensing of Contractor's Applications pursuant to Subscriptions and the provision of Services related to the configuration, implementation, maintenance and support thereof. This Master Agreement does not contemplate the sale, assignment, or transfer of any software. Contractor, and its third-party licensors shall retain all right, title and interest, including all patent, copyright, trade secret and other intellectual property rights, in and to the Contractor Applications. Except for the Subscriptions granted under Purchasing Documents, nothing in this Master Agreement shall give an Authorized Purchaser any right, title or interest in or to the Contractor Applications.
- B. Ownership.** As between an Authorized Purchaser and Contractor:
- i. Contractor Applications. Contractor shall be the sole and exclusive owner of all right, title and interest in and to the Contractor Applications, as well as all alterations, modifications, additions, and derivative works made with respect to the Contractor Applications. Except as expressly permitted or required hereby: (a) Authorized Purchasers shall have no right or license to the Contractor Applications; and (b) Authorized Purchasers shall not use, reproduce, publish or make available to others, modify, or create any derivative works of, all or any part of the Contractor Applications or Contractor Documentation.
 - ii. Authorized Purchaser Data and Deliverables. Each Authorized Purchaser shall be the sole and exclusive owner of all right, title and interest in and to its Authorized Purchaser Data and the Deliverables produced under its respective Purchasing Documents. Except as expressly permitted or required herein or in an applicable Purchasing Document: (a) Contractor shall have no right or license to the Deliverables; and (b) Contractor shall not use, reproduce, publish, or make available to others, modify or create any derivative works of, all or any part of the Authorized Purchaser Data and Deliverables, except as authorized in this Master Agreement or applicable Purchasing Documents or approved in writing by the owner of the Authorized Purchaser Data and Deliverables.
 - iii. Rights of Licensees. This Master Agreement sets forth the rights of Authorized Purchasers in the Contractor Applications. Nothing in any Purchasing Document shall in anyway enlarge or extend an Authorized

Purchaser's license rights with respect to the Contractor Applications and Contractor Documentation delivered by Contractor to the Authorized Purchaser under a Purchasing Document.

- iv. Trademarks. All trademarks, service marks, trade names, and logos of Contractor appearing on or within the Contractor Applications or any materials used in connection with Support and Maintenance Services are the property of Contractor and Authorized Purchasers shall not use them without Contractor's prior written approval.

XII. Reporting

- A. Reports and Notices. Contractor shall provide to the WSCA/NASPO Contract Administrator the reports and notices set forth in this **§XII** in accordance with the provisions hereof. Contractor shall provide to each Participating Entity representative identified in a Participating Addendum such additional reports and notices as may be required therein.
 - i. Litigation. Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency related to this Master Agreement, which could reasonably be expected to affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the WSCA/NASPO Contract Administrator of such action and deliver copies of such pleadings to the WSCA/NASPO Contract Administrator. Within ten (10) days after being served with a pleading in a legal action filed with a court or administrative agency related to a Purchasing Document, which could reasonably be expected to affect Contractor's ability to perform its obligations under such Purchasing Document, Contractor shall notify the WSCA/NASPO Contract Administrator and the Participating Entity representative identified in the Participating Addendum under which the affected Purchasing Documents were issued.
 - ii. Subcontracts. Copies of any and all subcontracts entered into by Contractor solely for the purpose of performing its obligations hereunder or under any Purchasing Document shall be submitted to the WSCA/NASPO Contract Administrator upon request. Any and all subcontracts entered into by Contractor solely related to its performance hereunder shall provide that such subcontracts shall be governed by the laws of the State of Colorado. Any and all subcontracts entered into by Contractor solely related to its performance under a Purchasing Document shall provide that such subcontracts shall be governed by and comply with the laws governing the Participating Addendum under which the Purchasing Document was issued.
 - iii. Quarterly Reports. Contractor shall submit quarterly volume reports to the WSCA/NASPO Contract Administrator by the last day of the month immediately following the end of each calendar quarter (January 31, April 30, July 31 and October 31), containing the following information: (a) the quarter for which the report was prepared; (b) a summary of all invoices issued to Authorized Purchasers within such quarter that are issued ,

including all invoices issued under Participating Addenda and/or Affiliate Agreements; (c) the identification of each Authorized Purchaser, including Affiliates, by legal entity name, address, contact person, contact phone number, invoice number, total invoiced dollar amount and date of invoice; (c) the itemized published list pricing, discounted pricing and calculated savings for each invoice. Contract shall provide a copy of each invoice issued under a Participating Addendum or Affiliate Agreement upon the request of the WSCA/NASPO Contract Administrator.

iv. American Recovery and Reinvestment Act of 2009 ("ARRA"). If or when Contractor is notified by an Authorized Purchaser that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829 (or subsequent changes or modifications to those requirements as published by the Federal OMB). An Authorized Purchaser is responsible for informing Contractor as soon as the Authorized Purchaser is aware that ARRA funds are being used for a purchase. Contractor shall provide the required report to the Authorized Purchaser with the invoice presented to the Authorized Purchaser for payment. Contractor, as it relates to purchases under this Master Agreement, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

B. Non-Compliance. Contractor's failure to provide reports and Notices to the WSCA/NASPO Contract Administrator in a timely manner in accordance with the provisions of this Master Agreement shall constitute a breach hereof and may result in termination as provided in **§XXII** (Remedies) below. Contractor's failure to provide reports and Notices to a representative identified in a Participating Addendum in a timely manner in accordance with the provisions of this Master Agreement and such Participating Addendum shall constitute a breach of such Participating Addendum and may result in termination of the Participating Addendum as provided herein or in such Participating Addendum.

XIII. Contractor Records

A. Maintenance. Contractor shall make, keep, maintain, and allow inspection and monitoring by the WSCA/NASPO Contract Administrator of a complete file of all material records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Subscriptions and Services provided under any Purchasing Document. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Master Agreement expires or is sooner terminated; (ii) a period of three years after the date the applicable Purchasing Document expires or is sooner terminated; or (iii) the resolution of any pending matters hereunder or under any Purchasing Document (collectively, the "Record Retention Period").

B. Inspection. Contractor shall permit the WSCA/NASPO Contract Administrator to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records described in **§XIII(A)** above during the Record Retention Period or until final payment is made under all Purchasing Documents, whichever is later, to assure

compliance with the terms hereof. Contractor shall permit each Authorized Purchaser to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records described in **§XIII(A)** above applicable to those Purchasing Documents to which the Authorized Purchaser is a party during the Record Retention Period.

- C. Monitoring. Contractor shall permit the WSCA/NASPO Contract Administrator, the federal government, any state, and any governmental agency having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Master Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the WSCA/NASPO Contract Administrator or a state or other Government Entity, in its capacity as Participating Entity or Authorized Purchaser, shall be performed in a manner that shall not unduly interfere with Contractor's general business operations or performance hereunder.

XIV. Confidential Information

Each Party to this Master Agreement and each party to a Purchasing Document shall comply with the provisions of this **§XIV** if it becomes privy to the Confidential Information of another Party or party in connection with its performance hereunder or thereunder.

- A. Defined. "Confidential Information" means all confidential information of a Party to this Master Agreement or a party to a Purchasing Document, whether in paper or electronic format, disclosed to a receiving Party or party (a "Recipient") that is designated in writing as confidential at the time of disclosure. Confidential Information shall not include information required to be disclosed pursuant to the open records statutes of the laws of a WSCA/NASPO Member governing this Master Agreement or any Purchasing Document. The disclosure of information under this Master Agreement shall be subject to the Colorado Open Records Act, CRS §24-72-200.1, et seq. The disclosure of information under a Participating Addendum shall be subject to the open records statutes of the jurisdiction of the Participating Entity that is a party to such Participating Addendum.
- i. Government Entity Confidential Information. Government Entity Confidential Information means the Confidential Information of a Government Entity, as defined herein, in the Purchasing Documents to which the Government Entity is a party, and in accordance with the laws, regulations and policies applicable to the Government Entity. Confidential Information of a Government Entity may include, but is not necessarily limited to, state records, personnel records, and information concerning individuals, including names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information.

- ii. Non-Government Entity Confidential Information. Non-Government Entity Confidential Information means all Confidential Information of a Non-Government Entity, whether in paper or electronic format, disclosed in writing to a Recipient party that is designated in writing as confidential at the time of disclosure.
- iii. Contractor Confidential Information. Contractor Confidential Information means all confidential information of Contractor, whether in paper or electronic format, disclosed to a Recipient that is designated in writing as confidential at the time of disclosure. Confidential Information related to Contractor's customer lists, customer information, products, product development, technical information, pricing information, pricing methodologies, or information regarding Contractor's financial condition, business planning or business operations shall be deemed Confidential Information to the extent such information is not subject to disclosure under the open record statutes of the laws of a WSCA/NASPO Member..
- iv. Exceptions. Confidential Information shall not include information that: (a) was generally available to the public at the time it was disclosed, or becomes generally available to the public through no fault of the Recipient; (b) was known to the Recipient at the time of disclosure as shown by written records in existence at the time of disclosure; (c) was developed independently by the Recipient prior to the disclosure, as shown by written records in existence prior to the disclosure; (d) is disclosed with the prior written approval of the disclosing Party or party ("Disclosing Party"); (e) becomes known to the Recipient from a source other than the Disclosing Party without breach of this Master Agreement or any Purchasing Document, and in a manner which is otherwise not in violation of the Disclosing Party's rights; (f) is disclosed as required under the open records statutes applicable to the Recipient; or (g) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Recipient shall attempt to provide reasonable advance notice to enable the disclosing Party to seek a protective order or otherwise prevent such disclosure.

B. Obligations of the Parties. Each Party to this Master Agreement and each party to a Purchasing Document receiving Confidential Information of a disclosing Party shall (i) treat as confidential all Confidential Information provided by the Disclosing Party in compliance with applicable laws, regulations, and state cyber-security procedures concerning the confidentiality of information; (ii) not use such Confidential Information except as expressly permitted under the terms of this Master Agreement or a Purchasing Document, or as otherwise previously authorized in writing by the Disclosing Party; (iii) implement reasonable procedures to prohibit the disclosure, unauthorized duplication, reverse engineering, disassembly, decompiling, misuse or removal of such Confidential Information; and (iv) not disclose such Confidential Information to any third party, except as permitted under **§XIV(A)(iv)** above. Without limiting the foregoing, each party shall use at least the same degree of care to prevent the disclosure of the Confidential Information of a Disclosing Party as it uses to prevent the disclosure of its own Confidential Information, and shall in any event use no less than a reasonable degree of care.

- C. Notification. Each Recipient of the Confidential Information of a Disclosing Party shall notify its agents, employees, Subcontractors and assigns who are authorized to use or reasonably may be expected to come into contact with the Confidential Information that each is subject to the confidentiality requirements set forth herein and in the applicable Purchasing Documents.

XV. Protected Public Documents

- A. Use, Security, and Retention. Government Entity Confidential Information shall not be distributed or sold to any third party or used by Contractor or its agents in any manner, except as authorized by this Master Agreement and approved in writing by an authorized representative of Lead State, or by a Purchasing Document and approved in writing by the authorized representative identified in the Purchasing Documents applicable to such Government Entity. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Government Entity Confidential Information wherever located. Government Entity Confidential Information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Master Agreement and approved in writing by an authorized representative of Lead State or, in a Purchasing Document and approved by the authorized representative identified in the Purchasing Documents applicable to such Government Entity.
- B. Third Party Requests. Any request or demand by a third party for Government Entity Confidential Information in the possession of Contractor shall be immediately forwarded to an authorized representative of the Government Entity to which the Government Entity Confidential Information belongs.
- C. Protected Public Documents. Disclosure of protected public records of a Government Entity or other Government Entity Confidential Information by Contractor for any reason may be cause for legal action by third parties against Contractor, the disclosing Government Entity, or their respective agents. Contractor shall indemnify, save, and hold harmless the disclosing Government Entity, Lead State, WSCA, and NASPO, and their respective employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this **§XV**.

XVI. Conflicts of Interest

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations under this Master Agreement or any Purchasing Document. Contractor acknowledges that even the appearance of a conflict of interest is harmful to the interests of the Parties to this Master Agreement and the parties to Purchasing Documents. Absent prior written approval from the WSCA/NASPO Contract Administrator, with respect to this Master Agreement, or the authorized representative of the Authorized Purchaser identified in the affected Purchaser Documents, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations hereunder or any

Purchasing Document. If a conflict or appearance exists, or a conflict of interest may exist, Contractor shall submit to WSCA/NASPO Contract Administrator and such Authorized Purchaser representative, if applicable, a disclosure statement setting forth the relevant details for the consideration of the WSCA/NASPO Contract Administrator and such Authorized Purchaser representative, if applicable. Failure to promptly submit a disclosure statement or to follow the direction of the WSCA/NASPO Contract Administrator in regard to an apparent conflict with this Master Agreement constitutes a breach hereof. Failure to promptly submit a disclosure statement or to follow the direction of the Authorized Purchaser's representative with respect to any Purchasing Documents constitutes a breach of such Purchasing Documents, unless provided to the contrary in such Purchasing Documents.

XVII. Representations and Warranties

Contractor makes the following specific representations and warranties, each of which was relied on by Lead State, NASPO and WSCA in entering into this Master Agreement. Except as expressly stated to the contrary, the representations and warranties made by Contractor hereunder are continuing representations and warranties and shall apply to and be true and correct on the date of execution of each Purchasing Document entered into by Contractor pursuant to this Master Agreement as though newly made on the execution thereof.

- A. Contractor Applications. Contractor warrants that each Contractor Application shall operate in substantial conformity with the requirements and specifications applicable to such Contractor Application, as set forth in **§VIII (Specifications)** above and in the then current published functional specifications for such Contractor Application available to Authorized Purchasers and End Users through such Contractor Application. Contractor represents and warrants that it has and during the term of this Master Agreement shall have all rights required to use and to allow Authorized Purchasers to use all licensed software incorporated as a part of the Contractor Applications

- B. Licenses, Permits, Authorizations. Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law ("Required Authorizations") to perform its obligations hereunder. Contractor further represents and warrants that as of the effective date of each Purchasing Document it shall have, and at all times during the term of such Purchasing Document shall maintain, all Required Authorizations necessary to perform its obligations under such Purchasing Document. Contractor shall obtain and maintain all Required Authorizations, without reimbursement by any other Party to this Master Agreement or any party to a Purchasing Document or other adjustment in funds under any Purchasing Document. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Master Agreement or any Purchasing Document shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the jurisdiction of an Authorized Purchaser, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in such jurisdiction and shall designate a registered agent in such state to accept service

of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Master Agreement or a Purchasing Document is a material breach by Contractor and constitutes grounds for termination of this Master Agreement or such Purchasing Document.

- C. Legal Authority. Contractor represents and warrants that it possesses the legal authority to enter into this Master Agreement and during the term of this Master Agreement shall possess the legal authority to enter into each Purchasing Document and that it has taken and shall take all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Master Agreement and each authorized signatory under a Purchasing Document to execute such Purchasing Document, or any part hereof or thereof, and to bind Contractor to the terms hereof or thereof. If requested by the WSCA/NASPO Contract Administrator or by any Authorized Purchaser, Contractor shall provide the WSCA/NASPO Contract Administrator or the designated representative of such Authorized Purchaser with proof of Contractor's authority to enter into this Master Agreement or any applicable Purchasing Document within fifteen (15) days of receiving such request.

XVIII. Insurance

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Master Agreement and each Purchasing Document. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the WSCA/NASPO Contract Administrator. Any additional policies evidencing the insurance coverage required under a Purchasing Document shall be issued by insurance companies satisfactory to Contractor and the Authorized Purchaser under such Purchasing Document.

- A. Contractors and Subcontractors. Contractor shall, and shall require each contract with a Subcontractor providing Services in connection with this Master Agreement or a Purchasing Document to provide insurance requirements substantially similar to the following:
- i. Worker's Compensation. Worker's Compensation Insurance as required by applicable legal requirements in the jurisdiction of the Authorized Purchaser, and Employer's Liability Insurance covering all of Contractor or Subcontractor employees acting within the course and scope of their employment.
 - ii. General Liability. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$2,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

- iii. Automobile Liability. Automobile Liability Insurance covering any auto (including hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
 - iv. Additional Insureds. WSCA, NASPO and Lead State shall be named as additional insureds on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder. Each Participating Entity and each Authorized Purchaser shall be added as an additional insured on all Commercial General Liability and Automobile Insurance upon the execution of a Purchasing Document by Contractor and such Participating Entity or Authorized Purchaser.
 - v. Primacy of Coverage. Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by a Party to this Master Agreement or any Participating Entity or Authorized Purchaser.
 - vi. Cancellation. The above insurance policies shall include provisions providing Contractor (a) fifteen (15) days prior notice of cancellation or non-renewal in the event of non-payment of premiums and (bi) thirty (30) days prior notice for cancellation for any other reason and Contractor shall forward such notice to the WSCA/NASPO Contract Administrator in accordance with **§XXV** (Notices and Representatives) within seven (7) days of Contractor's receipt of such notice.
 - vii. Subrogation Waiver. All insurance policies in any way related to this Master Agreement or any Purchasing Document and secured and maintained by Contractor or its Subcontractors as required herein or therein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor, the Parties to this Master Agreement, the parties to any Purchasing Document, and their respective agencies, institutions, organizations, officers, agents, employees, and volunteers.
- B.** Certificates. Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the WSCA/NASPO Contract Administrator within seven (7) business days of the Effective Date. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to WSCA/NASPO Contract Administrator or, in the case of Subcontractors, to Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the NASPO/WSCA Contract Administrator at any other time during the term of this Master Agreement or any subcontract solely related to this Master Agreement and/or any Purchasing Document, Contractor and each Subcontractor shall, within ten (10) days of such request, supply to the WSCA/NASPO Contract Administrator evidence satisfactory to the WSCA/NASPO Contract Administrator of compliance with the provisions of this **§XXVIII**. At the request of the designated representative identified in a Purchasing Document, Contractor and any

Subcontractor providing Services under such Purchasing Document shall provide to such representative certificates showing insurance coverage required under such Purchasing Document.

XIX. Indemnification

- A. General.** Contractor shall indemnify, save, and hold harmless the other Parties to this Master Agreement and each party to a Purchasing Document (each an "Indemnified Party" and collectively, the "Indemnified Parties"), and their respective employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any negligent act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Master Agreement; provided, however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., the governmental immunity statutes applicable to any other Indemnified Party, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as now or hereafter amended.
- B. Intellectual Property.** Contractor shall defend, indemnify and hold harmless the Indemnified Parties, from and against any and all claims, suits, proceedings, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and related costs) arising out of any claims, demands, suits or proceedings brought by a third party alleging that the Contractor Applications infringe upon any patent, copyright or trademark or misappropriate any trade secret or other intellectual property rights of any third party. Contractor shall have no obligation to indemnify an Indemnified Party to the extent that any alleged infringement arises out of (a) the use of the Contractor Applications in combination by the Indemnified Party with other data, products, software, processes or materials not provided or authorized by Contractor; (b) the modification of the Contractor Applications by a party other than Contractor; or (c) any unauthorized use of the Contractor Applications. Should any of the Contractor Applications as used by an Indemnified Party, or in Contractor's commercially reasonable opinion be likely to infringe, Contractor shall, at its option and sole expense: (i) procure for the Indemnified Party the right to continue to use the Contractor Applications, (ii) modify the Contractor Applications to eliminate any such claim that might result from their use, provided such modification does not adversely affect the functional capabilities of the Contractor Applications or (iii) replace the Contractor Applications with equally suitable, compatible and functionally equivalent non-infringing Contractor Applications at no additional charge to the Indemnified Party. If none of these options is commercially practicable, then this Master Agreement and any Purchasing Document may be terminated by any of the Parties hereto or parties thereto without further obligation or liability on the part of any of them, except that Contractor agrees to promptly refund to each Authorized Purchaser the fees paid by such Authorized Purchaser for the portion of any Subscription term for which the Contractor Applications would no longer be available to such Authorized Purchaser.

- C. Notice and Defense. The Indemnified Party promptly shall notify Contractor of a claim under this ~~§XIX~~; provided, however, that failure to do so shall not preclude the Indemnified Party's right to indemnification if such failure does not materially prejudice Contractor's ability to defend the claim. If such failure materially prejudices Contractor's ability to defend, the Indemnified Party's right to indemnification shall be diminished to the extent of the prejudice. Contractor shall control the defense and/or settlement of the claim and shall have the right to compromise or settle such claim for money damages, at Contractor's expense. Any other compromise or settlement shall require the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned, or delayed. Contractor shall reimburse the Indemnified Party for the Indemnified Party's reasonable, direct out-of-pocket expenses, as incurred, including, without limitation, attorneys' fees and related costs, incurred (i) as a result of participation in the defense at Contractor's request or (ii) in connection with the defense of the claim if Contractor fails to assume control and vigorously pursue the defense of the claim. The Indemnified Party may participate in the defense and/or settlement with counsel of its own.

XX. Responsibilities of the Parties

Each Party to this Master Agreement and each party to a Purchasing Document shall be responsible for the actual physical damages directly caused by the negligent acts or omissions of its respective employees, agents, or Subcontractors in the course of its performance under this Master Agreement or any Purchasing Document involving personal injury or death to persons or loss or damage to personal tangible property.

XXI. Breach

- A. Master Agreement. In addition to any breach specified in other sections of this Master Agreement, any of the following also shall constitute a breach hereunder: (i) the failure of a Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, after taking into account any applicable notice and cure periods; (ii) a material breach by Contractor of a Purchasing Document, as determined under such Purchasing Document; and (iii) the institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof (collectively, "Bankruptcy").
- B. Purchasing Documents. In addition to the breaches specified in a Purchasing Document, the following shall constitute a breach under each Purchasing Document: (i) the failure of any party to such Purchasing Document to perform any of its material obligations thereunder, in whole or in part or in a timely or satisfactory manner, after taking into account any applicable notice and cure periods set forth in such Purchasing Document or (ii) Contractor's Bankruptcy.
- C. Notice and Cure Period. In the event of a breach, Notice of such shall be given in writing by the aggrieved Party to this Master Agreement to the breaching Party or by the aggrieved party to a Purchasing Document to the other party thereto. If such breach is not cured within thirty (30) days of receipt of written notice, or if a

cure cannot be completed within thirty (30) days, or if cure of the breach has not begun within thirty (30) days and pursued with due diligence, the non-breaching Party to this Master Agreement or non-breaching party to a Purchasing Document may exercise any of the applicable remedies set forth in **§XXII** (Remedies) below. Notwithstanding anything to the contrary herein, a Government Entity, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate any Purchasing Document to which it is a party, in whole or in part, if reasonably necessary to preserve public safety or to prevent immediate public crisis.

XXII. Remedies

- A. Termination.** If a Party to this Master Agreement is in breach under any provision hereof, the aggrieved Party shall have all of the applicable remedies listed in this **§XXII** in addition to all other remedies set forth in other sections of this Master Agreement, following the Notice and cure period set forth in **§XXI** (Breach) above. If a party to a Purchasing Document is in breach under any provision thereof, the aggrieved party shall have all of the applicable remedies listed in this Master Agreement, in addition to such other remedies as may be set forth in the Purchasing Document. An aggrieved Party under this Master Agreement or an aggrieved party under a Purchasing Document may exercise any or all of the remedies available to it hereunder or thereunder, in its sole discretion, concurrently or consecutively.
- i. Cause and/or Breach.** An aggrieved Party to this Master Agreement may terminate this Master Agreement by written Notice if the breaching Party commits a material breach of this Master Agreement. An aggrieved party to a Purchasing Document may terminate such Purchasing Document by written Notice if the breaching party to such Purchasing Document commits a material breach of such Purchasing Document.
 - ii. Master Agreement.** To the extent specified in any termination Notice delivered with respect to this Master Agreement or any Purchasing Document, Contractor shall not incur further obligations or render further performance hereunder or thereunder, as applicable, past the effective date of a termination Notice.
 - iii. Purchasing Documents.** To the extent specified in any termination Notice delivered with respect to a Purchasing Document, Contractor shall terminate outstanding orders and subcontracts with third parties under such Purchasing Document. However, Contractor shall complete and deliver to the aggrieved party under the terminated Purchasing Document all Services not cancelled by the termination Notice and may incur obligations as are necessary to do so within the terms hereof and the terms of the Purchasing Document. The aggrieved party to such Purchasing Document shall reimburse Contractor only for accepted performance up to the date of termination.
 - iv. Damages and Withholding.** Subject to **§XXIII** (Limitation of Liability) below and notwithstanding any other remedial action by a breaching Party hereunder, each breaching Party shall remain liable to each non-

breaching Party for any damages sustained by such non-breaching Party by virtue of any breach hereunder. Subject to **§XXIII** (Limitation of Liability) below and to any applicable terms under a Purchasing Document and notwithstanding any other remedial action by a breaching party under such Purchasing Document, each breaching party shall remain liable to the non-breaching party under such Purchasing Document for any damages sustained by such non-breaching party by virtue of any breach thereunder.

B. Other Remedies

- i. **Contractor Applications.** In the event of breach by Contractor of its representations and warranties with respect to a Contractor Application under **§X(A)** (Subscription and Service Warranty) or **§XVII(A)** (Representations and Warranties) above, Contractor shall, at Contractor's sole option, and as sole and exclusive remedy (a) repair the applicable Contractor Application, (b) terminate the Purchasing Document under which the breach occurred and refund to the Authorized Purchaser a sum equal to the Subscription Fees paid for the period during which the Contractor Applications were rendered unusable, prorated on a monthly basis, or (c) with the consent of the Authorized Purchaser terminate the Subscription under which the breach occurred and refund to the Authorized Purchaser the Subscription Fees paid with respect to such Subscription for the period during which the Contractor Application was rendered unusable, prorated on a monthly basis.
- ii. **Services.** In the event of breach by Contractor of its representations or warranties with respect to Services, under this Master Agreement or any Purchasing Document, the other Parties to this Agreement or the Authorized Purchaser that is a party to the Purchasing Document under which the breach occurred may exercise one or more of the following remedies: (a) suspend Contractor's performance with respect to all or any portion of the Purchasing Document pending necessary corrective action as specified by the Authorized Purchaser without entitling Contractor to an adjustment in price/cost or performance schedule; (b) withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed; and (c) require Contractor to re-perform the breaching Services.
- iii. **Removal.** Notwithstanding any other provision herein or in a Purchasing Document, an Authorized Purchaser may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom Authorized Purchaser deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to such Purchasing Document is deemed to be contrary to the public interest or Authorized Purchaser's best interest.

XXIII. Limitation of Liability

- A. **Consequential and Other Damages.** None of the Parties to this Master Agreement, the parties to any Purchasing Document, or their respective affiliates,

directors, officers, employees, agents or subcontractors, shall be liable to the any other Party or party, or their respective Affiliates, for any indirect, incidental, special, consequential, punitive or exemplary damages or liability (including reasonable attorneys' fees) that result from or are related to this Master Agreement, any Purchasing Documents or any or their respective exhibits or attachments, whether in contract or tort or under any other theory of liability, even if the other Party, party, or respective Affiliate has been informed of the possibility of such damages or liability.

- B.** Maximum Liability. Except for amounts owed to Contractor by an Authorized Purchaser, as authorized under an applicable Purchasing Document, the aggregate liability of any party related to or arising out of such Purchasing Document, or any of its respective exhibits or attachments, whether in contract, tort or under any other theory of liability, shall not exceed the aggregate amounts payable to Contractor by the Authorized Purchaser under such Purchasing Document in the 24 months preceding the event giving rise to such damages. The limitations of liability under this section shall not apply to any obligations and liabilities arising from death, personal injury, damage to tangible property or intellectual property infringement. The aggregate liability of any Party related to or arising out of this Master Agreement or its respective exhibits or attachments, shall be limited to whether in contract, tort or under any other theory of liability, shall not exceed \$500,000.00. None of WSCA, NASPO, or the Lead State shall have any liability under any Purchasing Document or its respective exhibits or attachments under any theory of liability

XXIV. Governmental Immunity

Liability for claims for injuries to persons or property arising from the actions or inactions of a Government Entity shall be controlled and limited by the laws of the jurisdiction applicable to such Government Entity, as set forth in the Purchasing Documents to which such Government Entity is a party. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees under this Master Agreement and under any Purchasing Document to which it is a party is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

XXV. Notices and Representatives

Each individual identified below is the principal representative of the designating Party. All Notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy Notice, Notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written Notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. Lead State:

Tom Spiker
State Purchasing Office
Colorado Department of Personnel and Administration
633 17 th Street
Suite 1600
Denver, CO 80202
tom.spiker@state.co.us

with a copy to the WSCA/NASPO Contract Administrator.

B. WSCA/NASPO Contract Administrator:

Jack Gallt
AMR Management Services
201 East Main
Suite 1405
Lexington, KY 40507
jgallt@amrms.com

C. Contractor:

Jennifer Kaelin
Vice President of Finance
SciQuest, Inc.
6501 Weston Parkway
Suite 200
Cary, NC 27513
jkaelin@sciquest.com

XXVI. Miscellaneous

A. Assignment and Subcontracts.

- i. By Contractor. Contractor's rights and obligations hereunder are personal and shall not be transferred, assigned or subcontracted without the prior, written consent of the WSCA/NASPO Contract Administrator. Contractor's rights and obligations under each Purchasing Document are personal and shall not be transferred, assigned or subcontracted without the prior, written consent of the Authorized Purchaser's representative identified in the applicable Purchasing Document. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved hereunder are subject to all of the provisions hereof. All assignments, subcontracts, or Subcontractors approved by an Authorized Purchaser designated representative under a Purchasing Document shall be subject to all of the

provisions hereof and thereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

- ii. By Lead State. Lead State, in its sole discretion and at any time, may transfer or, assign all of its rights and obligations under this Master Agreement to WSCA or, upon prior written consent of the WSCA Directors, to any other WSCA Member, and upon such transfer, shall have no further rights or obligations under this Master Agreement, except as may be set forth in any separate Purchasing Documents entered into by Lead State on its own behalf. Lead State shall provide Notice to the other Parties of such assignment, specifying the effective date thereof.

- B. Binding Effect. Except as otherwise provided in **§XXVI(A)** above, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

- C. Captions. The captions and headings in this Master Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

- D. Counterparts. This Master Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

- E. Entire Understanding. This Master Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

- F. Jurisdiction and Venue. All suits or actions related to this Master Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver. All suits or actions related to a Purchasing Document shall be filed and proceeding held in the state and venue of the Authorized Purchaser to such Purchasing Document, as set forth in such Purchasing Document.

- G. Modification.
 - i. By the Parties. Except as specifically provided in this Master Agreement, modifications of this Master Agreement shall not be effective unless agreed to in writing by the Parties in an amendment to this Master Agreement, properly executed and approved in accordance with applicable Colorado State law and Fiscal Rules. Modifications permitted under this Addendum, other than contract amendments, shall conform to the Policies of the Office of the Colorado State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

- ii. By Operation of Law. This Master Agreement is subject to such modifications as may be required by changes in federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Addendum on the effective date of such change, as if fully set forth herein.
 - iii. Of Purchasing Documents. Modifications of a Participating Addendum shall be governed by such Participating Addendum. Modification of a Service Order or Affiliate Agreements shall be governed by the Participating Addendum under which such Service Order or Affiliate Agreement is issued.
- H. Order of Precedence. The provisions of this Master Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Master Agreement, and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
 - i. A Participating Addendum;
 - ii. An Affiliate Agreement, if applicable;
 - iii. A Service Order issued under a Participating Addendum or Affiliate Agreement;
 - iv. The provisions of the main body of this Master Agreement;
 - v. **Exhibit A** (WSCA Terms and Conditions);
 - vi. **Exhibits C** (Support and Maintenance Services) and **D** (Supplier Enablement Services);
 - vii. **Exhibit I** (Current Pricing and Discounts);
 - viii. **Attachment AA** (Request for Proposal);
 - ix. **Attachment BB** (Contractors Best and Final Offer); and
 - x. **Attachment BB** (Contractor's Proposal).
- I. Severability. Provided this Master Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Addendum in accordance with its intent.
- J. Survival of Certain Agreement Terms. Notwithstanding anything herein to the contrary, **§§II** (Definitions), **IV** (Term and Early Termination), **XIV**, (Confidential Information), **XXIII** (Limitation of Liability), **XXIV** (Governmental Immunity), and **XXVI** (Miscellaneous) of this Master Agreement shall survive termination of this Master Agreement and shall be enforceable by each Party, as applicable.
- K. Taxes. Provisions applicable to Participating Entities and Authorized Purchasers that are exempt from federal, state, and/or local government taxes with respect to purchases or services shall be set forth in each Participating Addendum, to the extent applicable, Lead State is exempt from all federal excise taxes under IRC

Chapter 32 (No. 84-730123K) and from all state and local government sales and use taxes under CRS §§39-26-101 and 201, et seq., and the application of such exemptions shall be set forth in the Participating Addendum entered into by the Lead State.

- L. Third Party Beneficiaries. Except the extent that the terms and conditions of this Master Agreement are incorporated into Purchasing Documents, (i) enforcement of this Master Agreement and all rights and obligations hereunder are reserved solely to the Parties and (ii) any services or benefits which third parties receive as a result of this Master Agreement are incidental to this Master Agreement, and do not create any rights for such third parties. Enforcement of any Purchasing Document and all rights and obligations thereunder are reserved solely to the parties to such Purchasing Document and any services or benefits which third parties receive as a result of such Purchasing Document are incidental thereto and do not create any rights for third parties.
- M. Waiver. Waiver of any breach under a term, provision, or requirement of this Master Agreement or any Purchasing Document, or any right or remedy hereunder or thereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- N. Publicity. None of the Parties to this Master Agreement or the parties to any Purchasing Document may issue any press release regarding this Master Agreement or such Purchasing Document without the prior written consent of the other Parties hereto or parties thereto. Contractor may include the name and logo of an Authorized Purchaser in Contractor's lists of customers to the extent specifically authorized in the Participating Addendum under which a Purchasing Document is issued or in the Purchasing Documents executed by the Authorized Purchaser.
- O. Independent Contractor. Contractor shall perform its duties hereunder and under each Purchasing Document as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of any other Party to this Master Agreement or any other party to a Purchasing document. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through any other Party to this Master Agreement or party to a Purchasing Document and such Parties hereunder and parties thereunder shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Master Agreement or any Purchasing Document. Contractor shall not have authorization, express or implied, to bind the other Parties to this Master Agreement or any party to a Purchasing Document to any agreement, liability or understanding, except as expressly set forth herein or therein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the WSCA/NASPO Contract Administrator or the

identified representative under a Purchasing Document, and (iii) be solely responsible for its acts and those of its employees and agents.

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THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>CONTRACTOR: SciQuest, Inc. Name: Rudy Howard Title: Chief Financial Officer</p> <hr/> <p>Signature _____ Date: _____</p>	<p>LEAD STATE: STATE OF COLORADO John Hickenlooper, GOVERNOR Department of Personnel & Administration, Division of Finance and Procurement</p> <hr/> <p>By: Kathy Nesbitt, Executive Director Date: _____</p>
<p>NASPO: National Association of State Procurement Officials, Inc. Name: Greg Smith Title: President</p> <hr/> <p>Signature _____ Date: _____</p>	<p>LEGAL REVIEW: John W. Suthers, Colorado Attorney General</p> <hr/> <p>By: _____ (Assistant) Attorney General Date: _____</p>
<p>APPROVED BY: Western States Contracting Alliance Name: Greg Smith Title: WSCA Chair</p> <hr/> <p>Signature _____</p>	

Date:	
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ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Master Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

David J. McDermott, CPA

By: _____

Date: _____




THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

<p>CONTRACTOR: SciQuest, Inc. Name: Rudy Howard Title: Chief Financial Officer</p> <p> Signature</p> <p>Date: <u>JUNE 30, 2011</u></p>	<p>LEAD STATE: STATE OF COLORADO John Hickenlooper, GOVERNOR Department of Personnel & Administration, Division of Finance and Procurement</p> <p> By: Kathy Nesbitt, Executive Director</p> <p>Date: <u>6.30.11</u></p>
<p>NASPO: National Association of State Procurement Officials, Inc. Name: Greg Smith Title: President</p> <p>Signature</p> <p>Date:</p>	<p>LEGAL REVIEW: John W. Suthers, Colorado Attorney General</p> <p>By: _____ (Assistant) Attorney General</p> <p>Date:</p>
<p>APPROVED BY: Western States Contracting Alliance Name: Greg Smith Title: WSCA Chair</p> <p>Signature</p> <p>Date:</p>	

THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

<p>CONTRACTOR: SciQuest, Inc. Name: Rudy Howard Title: Chief Financial Officer</p> <p> Signature</p> <p>Date: <u>JUNE 30, 2011</u></p>	<p>LEAD STATE: STATE OF COLORADO John Hickenlooper, GOVERNOR Department of Personnel & Administration, Division of Finance and Procurement</p> <p>By: Kathy Nesbitt, Executive Director</p> <p>Date: _____</p>
<p>NASPO: National Association of State Procurement Officials, Inc. Name: Greg Smith Title: President</p> <p> Signature</p> <p>Date: <u>6-30-11</u></p>	<p>LEGAL REVIEW: John W. Suthers, Colorado Attorney General</p> <p>By: _____ (Assistant) Attorney General</p> <p>Date: _____</p>
<p>APPROVED BY: Western States Contracting Alliance Name: Greg Smith Title: WSCA Chair</p> <p> Signature</p> <p>Date: <u>6-30-11</u></p>	

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STATE CONTROLLER

David J. McDermott, CPA

By: Robert J. Jovan

Date: 6-30-11