

NASPO ValuePoint

PARTICIPATING ADDENDUM**OFFICE SUPPLIES (2022-2027)**

Led by the State of Oregon

Master Agreement #: **PO-10700-00012990**Contractor: **ODP BUSINESS SOLUTIONS LLC**Participating Entity: **STATE OF NEBRASKA****CONTRACT 15824 OC**

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

- All products and accessories listed on the Contractor page of the NASPO ValuePoint website.

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers the **Office Supplies (2022-2027)** led by the State of Oregon for use by state agencies and other entities located in the Participating State (or State Entity) authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *Nebraska*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Term Period:** The initial term of the Participating Addendum is April 01, 2023 through December 31, 2024. The Participating Addendum may be renewed for three (3) additional one (1) year renewal when mutually agreeable to the Contractor and the State of Nebraska.
4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Joseph Taylor, Account Manager
Telephone:	417-379-9542
Email:	Joseph.taylor@odpbusiness.com

Contractor

Name:	John White, Inside Sales Specialist
Telephone:	512-877-1962
Email:	John.white@odpbusiness.com

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Participating Entity

Name:	Vicki Collins, Procurement Contracts Officer, DAS Nebraska State Purchasing Bureau
Address:	1526 K Street, Suite 130
Telephone:	402-471-1497
Fax:	402-471-2089
Email:	Vicki.collins@nebraska.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

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

Participating Entity must check one of the boxes below.

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

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

**State of Nebraska
 Standard Terms and Conditions**

I. TERMS AND CONDITIONS

Contractor may, if necessary, reject and provide alternative language for each clause. The Contractor should also provide an explanation of why the Contractor rejected the clause or rejected the clause and provided alternate language using "Track Changes". The State reserves the right to negotiate rejected or proposed alternative language. If the State and Contractor fail to agree on the final Terms and Conditions, the State reserves the right to not participate on the cooperative contract.

The Contractor should submit any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated into the Participating Addendum. The Contractor must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted prior to signing the Participating Addendum. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause, then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;

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3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

A. GENERAL

The Participating Addendum shall incorporate the following documents:

1. Participating Addendum ("PA")
2. State of Oregon NASPO ValuePoint Master Agreement No. PO-10700-00012990, including all attachments, amendments, and addendums as they existed on the Effective Date of this PA ("Master Agreement"); and
3. Amendments/Addendums to this PA.

These documents constitute the entirety of the PA.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed PA (or Master Agreement) with the most recent dated amendment having the highest priority, 2) executed PA and any attached Addenda, and 3) executed Master Agreement and any addendum.

Any ambiguity or conflict in the PA discovered after execution, not otherwise addressed herein, shall be resolved in accordance with the rules of Participating Addendum interpretation as established by the State of Nebraska.

B. PRICES

1. WEB ITEM ASSORTMENT

As part of this PA, the Contractor may add the products not part of the ODP Business Solutions, LLC catalog, but set forth on www.odpbusiness.com on the "Pricing Date" (the "Assortment"). Pricing for such items will be as follows:

On a date within the period commencing ten (10) days prior to the start of each calendar quarter and ending ten (10) days after the start of each calendar quarter (the "Pricing Date"), the Contractor shall take a "snapshot" of the regular sales pricing (promotions excluded) for each item in the Assortment. Pricing for the items in the Assortment shall be fixed for the calendar quarter at two percent (2%) off of the regular sales price (promotions excluded) set forth on www.odpbusiness.com on the Pricing Date.

Notwithstanding anything contained herein to the contrary, price reductions do not apply to gift cards and warranties, clearance items and promotional items, including, but not limited to, Instant Savings, Coupon Savings, Mail-In-Savings, and Bundled Savings.

The Fee will be added by Contractor to the base price at the time of purchase for all buying entities. Contractor reserves the right to offer such products at a greater discount than as set forth herein. Additionally, the Fee will be required and paid on web assortment purchases as part of the Fee remittance.

2. LOWER THAN MASTER AGREEMENT PRICING

Contractor shall have the right and is encouraged to lower pricing for those Product Categories within the Master Agreement. Any such adjusted lower pricing shall be a fixed price that is lower than the "List Minus" pricing that is available to the State under the terms of the Participating Addendum (the "Adjusted Pricing"). The Adjusted Pricing will be modified based upon market conditions and will remain in effect until such time as:

- a. Contractor provides a minimum of thirty (30) days written notice (email included) of any price changes – either up or down.

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- b. Such price changes are not in excess of the "List Minus" prices that is available to the State under the Participation Addendum.
- c. If the Contractor desires to create and offer the State any Special Promotional Pricing, Contractor will provide notice via email to the State of the terms and time limits of any such Special Promotions.

C. EXCLUSIONS

Contractor will block the following purchase requests from any agency of the State of Nebraska or employee designated by an agency of the State of Nebraska under Section II., M. of this agreement unless that purchase request was submitted with written approval from the State of Nebraska, Department of Administrative Services:

Description
Book Cases, Book Ends, Book Shelves
Storage Cabinets, Filing Cabinets, File Storage Systems, Rails
Office Furniture
Copiers/Multi-Function Machines
Telephone/Communications Equipment
Printers over \$500
Software
Personal Computers/Laptops
Food Items (example: Candy, Coffee)
OTC Pain Relievers, Aspirin, Antacids

D. GOVERNING LAW (STATUTORY)

Notwithstanding any other provision of this PA, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that:

1. The State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation;
2. This PA will be interpreted and enforced under the laws of the State of Nebraska;
3. Any action to enforce the provisions of this PA must be brought in the State of Nebraska per state law;
4. The person signing this PA on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations;
5. The indemnity, limitation of liability, remedy, and other similar provisions of the final PA, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and,
6. All terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy, or other similar provisions of the final PA are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

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

D. BEGINNING OF WORK

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

E. AMENDMENT

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

F. SEVERABILITY

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

G. LIMITATION OF LIABILITY (CONSTITUTIONAL)

It is understood by the parties that in the State of Nebraska's opinion, any limitation on the Contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section III, and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language supplied with the Contractor's bid or in the final PA.

H. IMPORTANT NOTICE LANGUAGE

Pursuant to Neb. Rev. Stat. §84-602.02, all State contracts in effect as of January 1, 2014, will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by State Law **WILL BE POSTED FOR PUBLIC VIEWING.**

I. COPYRIGHT MATERIAL

Contractor hereby grants permission to the State of Nebraska and/or its agencies to reprint or republish any and all copyrighted documents related to Contractor's response to this Request for Proposal, and any and all figures, illustrations, photographs, charts, and other supplementary material on a website accessible by the public pursuant to Neb. Rev Stat. §84-602.02. This waiver does not apply to proprietary information properly submitted in a separate sealed, package clearly marked "Proprietary".

J. PROPRIETARY INFORMATION

Pricing submitted within the existing Master Agreement and this PA may not be marked as proprietary information. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, Contractors submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such.

K. INSURER AND SURETY DISCLAIMER

The State of Nebraska, its officers, employees, and agents are not insurers or sureties for the Contractor. The State of Nebraska, its officers, employees, and agents shall not be liable for any judgment, settlement, damages or any other liability of the Contractor, regardless of amount, to the Lead State, other Purchasing or Participating Entities, or any and all other parties.

L. INDEMNIFICATION

1. GENERAL

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The Contractor agrees to defend, indemnify, hold and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this ITB.

3. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Contractor.

M. ATTORNEY'S FEES

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

N. ADVERTISING

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

O. ASSIGNMENT, SALE, OR MERGER

Either party may assign the PA upon mutual written agreement of the other party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the PA to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the PA until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this PA and perform all obligations of the PA.

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P. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

The Contractor shall allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this PA. The terms and conditions, including price, of the PA may not be amended.

The Contractor shall allow political subdivisions to use this PA. The terms and conditions, including price, of this PA shall apply. The State of Nebraska shall not be contractually or otherwise obligated or liable under any PA entered into pursuant to this clause.

Q. FORCE MAJEURE

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the PA due to a natural or man-made event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

R. CONFIDENTIALITY

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to State of Nebraska records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or State of Nebraska not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

S. OFFICE OF PUBLIC COUNSEL (Statutory)

If it provides, under the terms of this PA and on behalf of the State, health, and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. § 81-8,240 et seq. This section shall survive the termination of this Participating Addendum.

T. EARLY TERMINATION

The PA may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the PA at any time.
2. Either party, at its sole discretion, may terminate the PA for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the PA. In the event of termination, the Contractor shall be entitled to payment, determined on a pro-rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the PA immediately for the following reasons:
 - a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;

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- c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
- d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Participating Addendum by its Contractor, its employees, officers, directors, or shareholders;
- e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
- f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
- g. Contractor intentionally discloses confidential information;
- h. Contractor has or announces it will discontinue support of the deliverable; and,
- i. In the event funding is no longer available.

U. PARTICIPATING ADDENDUM CLOSEOUT

Upon termination of the PA for any reason the Contractor shall within thirty (30) days, unless stated otherwise herein:

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

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

II. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

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

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Sub Contractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a sub-Contractor to fulfill the terms of the PA shall remain under the sole direction and control of the Contractor or the sub-Contractor respectively.

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

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

If the Contractor intends to utilize any Subcontractor, the Sub Contractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor shall agree that it will not utilize any Sub Contractors not specifically included in its bid in the performance of the PA without the prior written authorization of the State.

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

Contractor shall insure that the terms and conditions contained in any PA with a sub-Contractor does not conflict with the terms and conditions of this PA.

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

B. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)

All Contractors must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Supplier who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at: <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the PA.

C. EMPLOYEE WORK ELIGIBILITY STATUS

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

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If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the PA.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified, or the Participating Addendum terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

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

E. PERMITS, REGULATIONS, LAWS

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

F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this PA.

The State shall own and hold exclusive title to any deliverable developed as a result of this P A. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

G. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

H. ANTITRUST

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

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I. SITE RULES AND REGULATIONS

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

J. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or goods provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the PA to request the PA comply with the changed standard at a cost mutually acceptable to the parties.

K. DISASTER RECOVERY/BACK UP PLAN

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

L. DRUG POLICY

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

M. ADDITIONAL SERVICES

Under this agreement, Agencies of the State of Nebraska may designate employees who have authority to order from Contractor's website. Such designations may be subject to review and alteration by Department of Administrative Services (State Purchasing Bureau). Contractor shall assign a representative to manage the designated State employees' accounts.

III. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT

Neb. Rev. Stat. §§ 73-501 through 73-509 states, "payments shall not be made until contractual deliverable(s) are received and accepted by the State".

B. TAXES (Statutory)

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

C. INVOICES

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

Contractor shall provide an electronic summary billing report for both an electronic and hardcopy of a detailed billing report to State of Nebraska AS Central Finance for each billing period. The billing period will be from

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the first of a month to the last day of the month. Each monthly billing must occur and be received within the first five (5) business days of the last day of each month. The electronic format for both the summary billing and the detail billing must be received in both PDF format and Comma Separate Value (CSV) format or other electronic format as approved by the State that can be downloaded to an Excel type format for review. The State also reserves the right to approve the file format Contractor delivers in CSV or other approved method. Contractor must review and correct billing prior to issuing for non-chargeable items, i.e. taxes, etc.

State of Nebraska, Department of Administrative Services will invoice the other State agencies. The State of Nebraska, Department of Administrative Services will be responsible for a single payment to the Contractor. Political subdivisions are responsible for payment directly to the Contractor for their orders.

A detailed billing report must include but not be limited to agency name, department name, sub-department name, business unit, address and/or building name, person placing the order and phone number and a detail list of all products ordered; order number assigned, unit pricing, with total line-item pricing and a total order price. The detail billing report will have a new page break at each Billing Code (Agency +Department +Sub-Department). In addition, the report must produce a sub-total break for each Business Unit. Backordered items will be identified with unit and total line-item pricing along with projected shipping date at the time of order entry.

D. PAYMENT (Statutory)

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section § 73-506(1)). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

E. QUARTERLY UTILIZATION REPORT

The Contractor shall provide to the State of Nebraska primary contact person quarterly utilization reports containing at a minimum the following information pertaining to State of Nebraska utilization:

1. Contractor Name;
2. Nebraska Contract number 15798 OC;
3. Purchase order number;
4. Description; Quantity;
5. Price; and,
6. Agency Name.

These reports will be provided in Excel Format and sent via email on a quarterly basis as follows:

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

F. ADMINISTRATIVE FEE/REBATE

The Contractor agrees to provide a quarterly Administrative Fee ("Fee") to the Participating State/Entity. The Fee will be payable to the Participating State/Entity in an amount equal to one percent (1%) of the net sales

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(net of any returns, credits, or adjustments) under this PA for the quarterly period. The Fee shall not be charged directly to the State, e.g., as a separate line item, fee or surcharge, but shall be included in the PAs unit prices.

Payment of the Fee by check shall be made within forty-five (45) days after the end of each calendar quarter. In the event the Participating State/Entity can receive payment via electronic funds transfer, Contractor can pay the Fee within thirty (30) days after the end of each calendar quarter, in accordance with following:

<u>Period Ending</u>	<u>EFT Payment Option Due</u>	<u>Payment by Check Option Due</u>
December 31	January 31	February 15
March 31	April 30	May 15
June 30	July 31	August 15
September 30	October 31	November 15

Any changes to the established Fee amount will be requested by the State at least 30 days prior to the beginning of a quarterly period and Contractor will be allowed to adjust pricing to reflect the change in the Fee.

The Contractor agrees to provide a quarterly utilization report, reflecting new sales to the State during the associated fee period. The report shall be in the format developed by the Lead State and as agreed to by the Contractor. The report will be provided in secure electronic format and/or submitted electronically to the State contact listed in the Addendum.

G. ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION

All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau
 c/o Central Finance, Administrative Services
 1526 K Street, Suite 150
 Lincoln, NE 68508

H. LATE PAYMENT (Statutory)

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

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

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

J. RIGHT TO AUDIT (First Paragraph is Statutory)

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit, and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties

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during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5% of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

6. **Subcontractors**: All contactors, dealers, and resellers authorized in the State of *Nebraska*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. **Orders**: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

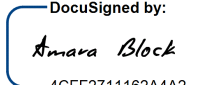
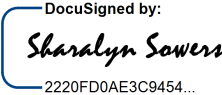
[SIGNATURE ON THE NEXT PAGE]

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

Participating Entity: State of Nebraska	Contractor: ODP Business Solutions, LLC
Signature: 	Signature: 
Name: Amara Block	Name: Sharalyn Sowers
Title: Materiel Administrator	Title: Vice President
Date: 4/6/2023	Date: 4/6/2023



[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Portfolio Manager:	Joel E. Atkinson
Telephone:	850-848-1250
Email:	jatkinson@naspovaluepoint.org

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]