

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**INMATE COMMUNICATIONS**  
 Led by the **State of Nevada**

Master Agreement #: 99SWC-NV22-13385

Contractor: Global Tel\*Link Corporation d/b/a ViaPath Technologies  
 ("ViaPath")

Participating Entity: **STATE OF NEBRASKA**

This Participating Addendum ("Participating Addendum") is entered into by Global Tel\*Link Corporation d/b/a ViaPath Technologies ("ViaPath or "Contractor") and the State of Nebraska ("Participating Entity" or "Participating State") (collectively, the "Parties"), for the purposes of participating in the NASPO Master Agreement Number 99SWC-NV22-13385 ("Master Agreement").

**Scope and Participation:**

1. Scope: This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Nevada and Contractor for Inmate Communications. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Term:

This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

**CONTRACTOR:**

Name:	Eileen Tobin
Address:	3120 Fairview Park Drive, Suite 300, Falls Church, VA 22042
Telephone:	571-379-2667
Fax:	N/A
Email:	Eileen.Tobin@viapath.com

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**PARTICIPATING ENTITY:**

Name:	NE State Purchasing Bureau (SPB) – Matthew Caddy
Address:	1526 K Street, Suite 130, Lincoln, NE 68508
Telephone:	402-471-1428
Email:	Matthew.Caddy@nebraska.gov

**Participating Entity Modifications and Additions to the Master Agreement**

This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

**I. TERMS AND CONDITIONS**

**A. GOVERNING LAW (Nonnegotiable)**

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

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

**B. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered.. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

**C. PRICES**

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

**The Participating Entity will be given full proportionate benefit of any decreases for the term of the contract.**

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**D. BEGINNING OF WORK & SUSPENSION OF SERVICES**

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

The Participating Entity may, at any time and without advance notice, require the Contractor to suspend any or all performance or deliverables provided under this Contract. In the event of such suspension, the Contract Manager or POC, or their designee, will issue a written order to stop work. The written order will specify which activities are to be immediately suspended and the reason(s) for the suspension. Upon receipt of such order, the Contractor shall immediately comply with its terms and take all necessary steps to mitigate and eliminate the incurrence of costs allocable to the work affected by the order during the period of suspension. The suspended performance or deliverables may only resume when the Participating Entity provides the Contractor with written notice that such performance or deliverables may resume, in whole or in part.

**E. CHANGE ORDERS OR SUBSTITUTIONS**

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

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The Participating Entity shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

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

**F. RECORD OF VENDOR PERFORMANCE**

The Participating Entity may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or participating addendum specifications. In addition to other remedies and options available to the Participating Entity, the Participating Entity may issue one or more notices to the vendor outlining any issues the Participating Entity has regarding the vendor's performance for a specific contract ("Vendor Performance Notice"). The Participating Entity may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Vendor Improvement Request"). The Vendor shall respond to any Vendor Performance Notice or Vendor Improvement Request in accordance with such notice or request. At the sole discretion of the Participating Entity, such Vendor Performance Notices and Vendor Improvement Requests may be placed in the Participating Entity's records regarding the vendor and may be considered by the Participating Entity and held against the vendor in any future contract or award opportunity.

**G. CORRECTIVE ACTION PLAN**

If Contractor is failing to meet the Scope of Work, in whole or in part, the Participating Entity may require the Contractor to complete a corrective action plan ("CAP"). The Participating Entity will identify issues with the Contractor's performance and will set a deadline for the CAP to be provided. The Contractor must provide a written response to each identified issue and what steps the Contractor will take to resolve each issue, including the timeline(s) for resolution. If the Contractor fails to adequately provide the CAP in accordance with this section, fails to adequately resolve the issues described in the CAP, or fails to resolve the issues described in the CAP by the relevant deadline, the Participating Entity may withhold payments and exercise any legal remedy available.

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**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**I. BREACH**

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by email to the contractor's point of contact with acknowledgement from the contractor, Certified Mail - Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the Participating Entity may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The Participating Entity's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

**J. NON-WAIVER OF BREACH**

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**K. SEVERABILITY**

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

**L. INDEMNIFICATION**

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the Participating Entity and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party 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 Participating Entity for personal injury, death, or property loss or damage, 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, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the Participating Entity which directly and proximately contributed to the claims.

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**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 Participating Entity gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the Participating Entity's use of the Licensed Software without the Participating Entity's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the Participating Entity's use of any intellectual property for which the Contractor has indemnified the Participating Entity, 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 Participating Entity's behalf to provide the necessary rights to the Participating Entity to eliminate the infringement, or provide the Participating Entity with a non-infringing substitute that provides the Participating Entity the same functionality. At the Participating Entity's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the Participating Entity may receive the remedies provided under this participating addendum.

**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, including subcontractor's and their employees, provided by the Contractor.

**4. SELF-INSURANCE**

The Participating Entity is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01. If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,239.01 to 81-8,306 for review by the Participating Entity Claims Board. The Participating Entity retains all rights and immunities under the Participating Entity Miscellaneous (Neb. Rev. Stat. § 81-8,294), Tort (Neb. Rev. Stat. § 81-8,209), and Contract Claim Acts (Neb. Rev. Stat. § 81-8,302), as outlined in state law and accepts liability under this agreement only to the extent provided by law.

- 5.** The Parties acknowledge that Attorney General for the Participating Entity is required by statute to represent the legal interests of the Participating Entity, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

**6. MONITORING AND RECORDING**

Participating Entity agrees that Contractor has no responsibility to advise Participating Entity with respect to any law, regulation, or guideline that may govern or control any recording or monitoring capabilities supplied to Participating Entity by Contractor under the Agreement, or compliance therewith. Participating Entity has its own legal counsel to advise it concerning any and all such law, regulation, or guideline, and compliance therewith, and makes its own determination on when and how to use the monitoring and recording capabilities supplied through this Agreement. Contractor disclaims any responsibility to provide, and in fact has not provided, Participating Entity any legal advice concerning such applicable law, regulation, or guideline, or compliance therewith. Participating Entity shall be solely responsible for any liability, costs and expenses relating to any claims made against Contractor arising out of failure of Participating Entity (or the Contractor at the direction of the Participating Entity) to comply with such law, regulation or guideline. Participating Entity acknowledges that all communication detail records ("DRs") and recordings contained in the Equipment Contractor provides to Participating Entity under this Agreement are the exclusive property of the Participating Entity for the term of this Agreement and any resulting extensions of this Agreement; provided, however, that Contractor shall have the right to use the DRs and recordings to

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respond to legal requests, to provide the Services under this Agreement, and for other lawful business purposes.

**M. ATTORNEY'S FEES**

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

**N. ASSIGNMENT, SALE, OR MERGER**

Either Party may assign the contract 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 Participating Entity in executing amendments to the contract for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**O. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUBDIVISIONS OF THE STATE**

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145(3), to use this contract. The terms and conditions, including price, of the contract may not be amended. The Participating Entity shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**P. 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 contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event") that was not foreseeable at the time the Contract was executed. 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.

**Q. 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 agency 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 agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**R. EARLY TERMINATION**

The contract may be terminated as follows:

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

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

3. The Participating Entity may terminate the contract, in whole or in part, 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,
  - 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 contract 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.

**S. CONTRACT CLOSEOUT**

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

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

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

**T. CHANGE OF LAW**

Any rule, regulation, or other change mandated by any federal, state, or local authority which may interfere with or adversely affect Contractor's rights, obligations, or intended benefit under the Participating Addendum shall entitle Contractor to, at its option, renegotiate or terminate the Participating Addendum.

**U. RELOCATION**

Equipment shall not be disconnected or moved by the Participating Entity from the location in which it is installed. By written agreement of the Parties, installed Equipment may be relocated by the Contractor.

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**V. FURTHER ASSURANCES**

During the Term of this Participating Addendum, including any Renewal Term(s) and extensions, Participating Entity agrees:

1. To reasonably protect the Equipment against willful abuse and promptly report any damage, Services failure or hazardous conditions to the Contractor. To the extent reasonably possible, the Participating Entity **shall not** allow any third party to, tamper with or otherwise modify the Services or equipment supplied by Contractor under this Participating Addendum or associated software, or connect the equipment or Services or associated software to any hardware or software that is not provided by Contractor.
2. To provide, at its expense, necessary power and power source, and provide suitable space, accessible to the users.
3. To permit reasonable access to its respective Facilities without charge or prejudice to Contractor employees or representatives, patrons, or consignees, including permit Contractor authorized personnel access to the equipment, information, data, data communication services, and communication lines required for the installation, operation, and/or maintenance of the Services contemplated herein at such times and for such purposes as reasonably necessary or appropriate to permit Contractor to perform its obligations.



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**II. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

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

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the Participating Entity. A federal

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immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

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

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 Participating Entity, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this participating addendum.

**D. COOPERATION WITH OTHER CONTRACTORS**

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

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

The following section takes precedence over Master Agreement section XI. Product Title: Title. Except as specifically indicated in a Service Schedule, title to all equipment provided under this Participating Addendum ("Equipment") shall be and shall at all times remain with the Contractor. Except as specifically indicated in a Service Schedule, all software, documentation, and other intellectual property (collective the "IP") supplied or made available through this Participating Addendum is being provided on a term license only, as long as this Participating Addendum is in effect, and shall not constitute a sale of that IP. Nothing in this Participating Addendum or through Contractor's performance hereunder shall constitute a transfer of right, title, or interest in or to the IP, which are retained by Contractor and its licensors.

During the term of this Participating Addendum, Contractor grants Participating Entity a non-exclusive, non-transferable, license to use the IP solely for accessing the Services supplied by Contractor in the manner contemplated by this Participating Addendum. Participating Entity shall not: (a) make available or distribute all or part of the IP to any third party by assignment, sublicense or by any other means; (b) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the IP; or (c) use the IP to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the IP. The use of software is supplied in object code only, and nothing herein shall be construed as granting any license whatsoever to the underlying source code that is used to generate the software, or creating an implied license in any IP."

**F. INSURANCE REQUIREMENTS**

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

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

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

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within three (3) years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and three (3) years following termination or expiration of the contract.

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

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

**1. WORKERS' COMPENSATION INSURANCE**

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

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

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

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

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<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Damage to Rented Premises (Fire)	\$100,000 each occurrence
Contractual	Included (Contractual Liability is only included for "insured contracts")
Abuse & Molestation	\$1,000,000 each victim / \$2,000,000 Aggregate
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>TECHNOLOGY ERRORS AND OMISSIONS LIABILITY</b>	
Technology Errors & Omissions	\$3,000,000 Per Claim / Aggregate
<b>COMMERCIAL CRIME</b>	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
<b>CYBER LIABILITY</b>	
Coverage for Claims resulting from a Security Failure or Privacy Event	\$10,000,000 Per Claim / Aggregate
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

**3. EVIDENCE OF COVERAGE**

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

Nebraska State Purchasing Bureau  
 Contract # 107253 O4  
 1526 K Street, Ste. 130  
 Lincoln, NE 68508  
 Matthew.Caddy@nebraska.gov

These certificates or the cover sheet shall reference the 107253 O4 contract number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the Participating Entity is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

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

**4. DEVIATIONS**

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

**B. ANTITRUST**

The Contractor hereby assigns to the Participating Entity 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 Participating Entity.

**C. CONFLICT OF INTEREST**

By signing, contractor certifies that no relationship exists between the contractor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this participating addendum.

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

If there is an actual or perceived conflict of interest, contractor shall provide a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The Participating Entity will then consider such disclosure and proposed mitigation plan and either approve or reject.

**D. STATE PROPERTY**

The Contractor shall be responsible for the proper care and custody of any Participating Entity-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the Participating Entity for any loss or damage of such property; normal wear and tear is expected.

**E. 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 Participating Entity premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the Participating Entity, it must make arrangements with the Participating Entity to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the Participating Entity on the basis of lack of access, unless the Participating Entity fails to provide access as agreed to in writing between the Participating Entity and the Contractor.

**F. 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 or services are endorsed or preferred by the Participating Entity. Any publicity releases pertaining to the project shall not be issued without prior written approval from the Participating Entity.

**G. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Nonnegotiable)**

1. The Participating Entity is committed to ensuring that all information and communication technology (ICT), developed, leased, or owned by the Participating Entity, affords equivalent access to employees, program participants and members of the public with disabilities, as it affords to employees, program participants and members of the public who are not persons with disabilities.
2. By entering into this Contract, Contractor understands and agrees that if the Contractor is providing a product or service that contains ICT, as defined in subsection II.G.3 (below) and such ICT is intended to be directly interacted with by the user or is public facing, such ICT must provide equivalent access, or be modified during implementation to afford equivalent access, to employees, program participants, and members of the public who have and who do not have disabilities. The Contractor

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may comply with this section by complying with Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing standards adopted and promulgated by the U.S. Access Board.

- 3. ICT means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Contractor hereby agrees ICT includes computers and peripheral equipment, information kiosks and transaction machines, telecommunications equipment, customer premises equipment, multifunction office machines, software, applications, web sites, videos, and electronic documents. For the purposes of these assurances, ICT does not include ICT that is used exclusively by a contractor.

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

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

**I. 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.

**G. ADMINISTRATIVE FEE/REBATE**

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one-quarter of one percent (0.25% or 0.0025) the net sales (net of any returns, credits, or adjustments) under this Participating Addendum for the period. Payments shall be made in accordance with following schedule:

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

**H. ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION**

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

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

**I. REPORTS**

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

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

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

Excel Quarterly Reports shall be emailed to:

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Nebraska State Purchasing Bureau  
Contract #107253 O4  
Attn: Matthew Caddy  
[Matthew.Caddy@nebraska.gov](mailto:Matthew.Caddy@nebraska.gov)

**J. WARRANTY**

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to the Participating Entity, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the Participating Entity all fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**K. TIME IS OF THE ESSENCE**

Time is of the essence with respect to Contractor's performance and deliverables pursuant to this Contract.

**L. RISK OF LOSS**

The Contractor and its insurers, if any, shall relieve the Participating Entity of all risks of loss or damage to the Equipment during the periods of transportation, installation, and operation of the Equipment. However, the Participating Entity shall be responsible for loss or damage to Equipment in its possession caused by fault or negligence of the Participating Entity or its employees.

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**III. PAYMENT**

- A. PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable)**  
 Pursuant to Neb. Rev. Stat. § 81-2403, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”
- B. TAXES (Nonnegotiable)**  
 The Participating Entity is not required to pay taxes and assumes no such liability as a result of this participating addendum. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.
- C. INVOICES**  
 Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the Participating Entity, and no action by the Participating Entity, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the Participating Entity with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the Participating Entity as an amendment to the contract. **The Participating Entity shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by the Participating Entity.**
- D. INSPECTION AND APPROVAL**  
 Final inspection and approval of all work required under the contract shall be performed by the designated Participating Entity officials.
- E. PAYMENT (Nonnegotiable)**  
 Payment will be made by the responsible agency in compliance with the Participating Entity Prompt Payment Act (See Neb. Rev. Stat. § 81-2403). The Participating Entity may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the Participating Entity be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.
- F. LATE PAYMENT (Nonnegotiable)**  
 The Contractor may charge the responsible agency interest for late payment in compliance with the Participating Entity Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).
- G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Nonnegotiable)**  
 The Participating Entity's obligation to pay amounts due on the Contract for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the Participating Entity may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The Participating Entity will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the Participating Entity to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.
- H. RIGHT TO AUDIT (First Paragraph is Nonnegotiable)**  
 The Participating Entity shall have the right to audit the Contractor's performance of this contract upon a thirty (30) days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the Participating Entity to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The Participating Entity 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



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

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the Participating Entity. If a previously undisclosed overpayment exceeds one-half of one percent (0.5%) 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 Participating Entity for the total costs of the audit. Overpayments and audit costs owed to the Participating Entity 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.

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

4. ***"Reserved"***.
5. **Subcontractors**: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.
6. **Orders**: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing 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 the order.

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IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**PARTICIPATING ENTITY**

**CONTRACTOR**

Signature:  DocuSigned by: <i>Amara Block</i> 4CFF2711162A4A2...	Signature:  DocuSigned by: <i>Eileen Tobin</i> E842CF0AC2F24B0...
Name:  Amara Block	Name:  Eileen Tobin
Title:  Chief Procurement Officer	Title:  Director, Contracts
Date:  2/2/2024	Date:  1/30/2024

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at [info@naspovaluepoint.org](mailto:info@naspovaluepoint.org).

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org).