

**PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING PROGRAM
Online Surplus Auction Services
Administered by the State of New Mexico (hereinafter "Lead State")**

**MASTER AGREEMENT
Gov Deals, Inc
Master Agreement No: 40-000-14-00059
(hereinafter "Contractor")**

And

**State of North Dakota
(hereinafter "Participating State")**

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1. **Scope:** This addendum covers the Online Auction Services led by the State of New Mexico for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize North Dakota state contracts with the prior approval of the state's chief procurement official.

The approved scope of work for the State of North Dakota is Tier 1 and Tier 2.

2. **Participation:** Use of specific WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Participating State Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

- A. **Cooperative Purchase:** This Contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (NDCC) sections 54-44.4-13. This Contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities located in North Dakota (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C chapter 39-04.2, and the International Peace Garden.
- B. **Coterminous:** The term of this Participating Addendum will be coterminous with the WSCA-NASPO Master Agreement.
- C. **Prepayment:** Participating State will not make any advance payments before performance by Contractor under this Contract.
- D. **Payment of Taxes by Participating State:** Participating State is not responsible for and will not pay local, state, or federal taxes. Participating State sales tax exemption number is E 2001. Participating State will furnish certificates of exemption upon request by the Contractor.

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E. Termination:

- a. Termination by mutual agreement: This Contract may be terminated by mutual consent of both parties executed in writing.
- b. Termination without cause: Participating State may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.
- c. Termination for lack of funding or authority: Participating State by written notice to Contractor, may terminate the whole or any part of this Contract under any of the following conditions:
 - i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
 - ii. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - iii. If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- d. Termination for cause: Participating State may terminate this Contract effective upon delivery of written notice to Contractor, or any later date stated in the notice
 - i. If Contractor fails to provide services required by this Contract within the time specified or any extension agreed to by Participating State; or
 - ii. If Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of Participating State provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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- F. Suspension for Convenience:** Participating State shall have the right at any time to order the services of Contractor fully or partially stopped for Participating State's own convenience. Participating State shall provide Contractor written notice of the reason for and duration of the suspension. The schedule shall be delayed on a day-for-day basis to the extent Participating State has issued a stop work order to Contractor and such stop work order is causing delays in completing services in accordance with the schedule. Contractor shall have the right to submit claims in accordance with the terms of this Contract as a result of stop work orders issued under this section.
- G. Injunctive Relief:** Contractor shall immediately report to Participating State any and all unauthorized disclosures or uses of Participating State's Confidential Information or Proprietary Information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any unauthorized publication or disclosure of Participating State's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Participating State. If Contractor should publish or disclose such Confidential Information or Proprietary Information without authorization, Participating State shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify, defend, and hold harmless Participating State from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's unauthorized notification or disclosure of Participating State's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, Participating State will provide Contractor with prompt notice of any claim of which Participating State is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with Contractor in connection with any such claim.
- H. Right of Setoff Damages:** Amounts due Participating State by Contractor, including liquidated or other damages, or claims for damages, may be deducted or set-off by Participating State from any money payable to Contractor pursuant to this Contract.
- I. Right to Withhold Amounts Otherwise Due if the Contractor is in Breach:** If Contractor fails to deliver Deliverables or to provide Services which satisfy Contractor's obligations under this Contract, Participating State shall have the right to withhold any and all payments due under this Contract. Participating State may withhold any and all such payments due under this Contract to Contractor without penalty or work stoppage by Contractor, until such

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failure to perform is cured.

- J. **Rights to Remedies and Cumulation of Rights:** No remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.
- K. **Indemnity:** Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.
- L. **Representations and Warranties:** Contractor represents and warrants to Participating State that neither Contractor, in connection with performing the services in performance of this Contract, nor the completed product delivered by Contractor, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Contractor further represents and warrants to Participating State that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless Contractor has the authority to license, use or provide those trade secrets or confidential or proprietary information to Participating State. Contractor further represents and warrants to Participating State that neither Contractor nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.
- M. **Works for Hire:** Contractor acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States

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Code) and hereby assigns to Participating State all rights and interests Contractor may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by Contractor in performance of this Contract for Participating State shall be the sole property of Participating State, and Contractor hereby assigns and transfers all its right, title, and interest therein to Participating State. Contractor shall execute all necessary documents to enable Participating State to protect Participating State's intellectual property rights under this section.

- N. **Confidentiality:** Contractor shall not use or disclose any information it receives from Participating State under this Contract that Participating State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by Participating State. Participating State shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of Participating State and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract.
- O. **Compliance with Public Records Laws:** Contractor understands that, except for disclosures prohibited in this Contract, Participating State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records obtained or generated by Contractor under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Contractor agrees to contact Participating State immediately upon receiving a request for information under the public records law and to comply with Participating State's instructions on how to respond to the request.
- P. **Spoliation – Notice of Potential Claims:** Contractor shall promptly notify Participating State of all potential claims that arise or result from this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating State the opportunity to review and inspect the evidence, including the scene of an accident.

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- Q. Severability:** If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.
- R. Applicable Law and Venue:** This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
- S. Alternative Dispute Resolution – Jury Trial:** Participating State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating State does not waive any right to a jury trial.
- T. Attorney Fees and Costs:** In the event a lawsuit is instituted by Participating State to obtain performance under this Contract, and Participating State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. §28-26-04, pay Participating State's reasonable attorney fees and costs in connection with the lawsuit.
- U. Nondiscrimination and Compliance with Laws:** Contractor agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this Contract all licenses and permits required by law.
- 4. Reserved.**
- 5. Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

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Name	Roger Gravley
Address	100 Capitol Commerce Blvd., Ste 110, Montgomery, AL 36117
Telephone	800-613-0156
Fax	1-334-387-0519
E-mail	vendor@govdeals.com



Participating Entity

Name	Tricia Opp
Address	600 East Boulevard Ave, Dept 012, 14 th Floor Capitol Tower, Bismarck, ND 58505
Telephone	701-328-1721
Fax	701-328-1615
E-mail	topp@nd.gov

6. Reserved.

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.

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

Participating State:	Contractor: GovDeals, Inc.
By: 	By: 
Name: Tricia Opp	Name: Roger Gravley
Title: Procurement Officer II	Title: President
Date: 1/14/15	Date: 1/12/15

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

