

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 Utah
(hereinafter "Participating State/Entity")

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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/Entity** authorized by that state's statutes to utilize **Participating State/Entity** contracts with the prior approval of the state's chief procurement official.

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 **Participating State/Entity** 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.)

State of Utah Additional Terms and Conditions
For WSCA-NASPO Participating Addendums

The following terms and conditions will be added to the Participating Addendum for the State of Utah:

1) **AUTHORITY**: Provisions of this Addendum are pursuant to the authority set forth in 63G-6a, Utah Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2) **LAWS AND REGULATIONS**: Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.

3) **RECORDS ADMINISTRATION**: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

4) **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM"**: The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to other types of procurement processes, including but not limited to Invitation to Bids or to Multiple Stage Bids.

4.1 Status Verification System

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A. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.

B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

C. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.

D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

4.2 Indemnity Clause for Status Verification System

A. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

B. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

5) INDEMNITY CLAUSE: The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

6) EMPLOYMENT PRACTICES CLAUSE: The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also,

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the Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place.

7) **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

8) **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon thirty (30) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

9) NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:

9.1 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part at the sole discretion of the State, if the State reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of the contract.

9.2 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part, or have the services and purchase obligations of the State proportionately reduced, at the sole discretion of the State, if the State reasonably determines that a change in available funds affects the State's ability to pay under the contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

9.3 If a notice is delivered under paragraph 1 or 2 of this Section 14 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," the State will reimburse the Contractor for products properly delivered or services properly performed up until the effective date of said notice. The State will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said notice.

9.4 Notwithstanding any other paragraph or provision of this Section 14 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," if the State in said notice to the Contractor indicates that the Contractor is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, the Contractor shall immediately cease such orders or commitments upon receipt of said notice and the State shall not be liable for any such orders or commitments made after the receipt of said notice.

10) **TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property

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or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

11) **LIABILITY INSURANCE:** Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.

12) **PARTICIPANTS:** This is a contract to provide the State of Utah government departments, institutions, agencies political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations and agencies of the federal government with the goods and/or services described in the bid/proposal.

13) **POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.), nonprofit organizations and agencies of the federal government will be voluntarily determined by the political subdivisions, nonprofit organizations and agencies of the federal government. The Contractor agrees to supply the political subdivisions, nonprofit organizations and agencies of the federal government based upon the same terms, conditions and prices.

14) REPORTS AND FEES:

14.1 **Administrative Fee:** The Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee is an amount equal to 0.2% (two tenths of one percent) of all purchases (net of any returns, credits, or adjustments) made under this Contract for the period.

14.2 **Quarterly Reports:** The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address salesreports@utah.gov.

14.3 **Payment and Report Schedule:** Payments and reports shall be made in accordance with the following schedule:

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

14.4 **Timely Reports and Fees:** If the Administrative Fee is not paid by the Due Date or Quarterly Reports are not received by the Due Date, then the Contractor will be in breach of the Contract, and the Contract may be canceled for cause.

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15) **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

16) **ORDERING AND INVOICING:** Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the ordering agency. The STATE contract number and the agency ordering number will appear on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices on file with the State of Utah Division of Purchasing. The STATE has the right to adjust or return any invoice reflecting incorrect pricing.

17) **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail, electronic funds transfer, or Purchasing Card.

18) **HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

19) **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

20) **CONFIDENTIALITY:** Contractor, and anyone for whom the Contractor may be liable, must maintain the confidentiality of any non-public personal information. Personal information includes, but is not limited to, names, social security numbers, birth dates, address, credit card numbers and financial account numbers. The State reserves the right to identify additional reasonable types or categories of information that must be kept confidential by the Contractor and anyone for whom the Contractor may be liable. This duty of confidentiality shall be ongoing and survive the term of this contract.

21) **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of

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such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Code, as amended).

22) **ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in the solicitation.

23) **INDIVIDUAL CUSTOMERS:** Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by this Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

Rev 21 May 2014

4. Lease Agreements: **Reserved**

5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Robert Debardelaben
Address	5907 Carmichael Place, Montgomery, AL 36117
Telephone	800-613-0156
Fax	1-334-387-0519
E-mail	vendor@govdeals.com

Participating Entity

Name	Tyler Barnes
Address	3150 State Office Building, Salt Lake City, UT 84114
Telephone	801-538-3026
Fax	801-538-3882
E-mail	tbarnes@utah.gov

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6. Subcontractors: All **Contractor** dealers and resellers authorized in the State of Utah, as shown on the dedicated **Contractor** (cooperative contract) website, are approved to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement. The **Contractor's** dealer's 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.

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

Participating State: State of Utah	Contractor: GovDeals, Inc.
By: <i>Kent D Beers</i>	By: <i>Robert L. DeBardelaben</i>
Name: <i>Kent D Beers</i>	Name: Robert L. DeBardelaben
Title: <i>Director, Purchasing</i>	Title: Operating President
Date: <i>9/23/14</i>	Date: 9/19/14

[Additional signatures as required by Participating State]

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For questions on executing a participating addendum, please contact:

WSCA-NASPO

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@wsca-naspo.org

[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]

**WSCA-NASPO
COOPERATIVE PURCHASING
ORGANIZATION, LLC**