

MA 18P 22091200000000000048
NEW

State of Maine



Master Agreement

Effective Date: 10/25/22

Expiration Date: 09/01/24

Master Agreement Description: NASPO ValuePoint On-Line Surplus Auction Services

Buyer Information

William Allen 207-624-7871 ext. NULL WJE.Allen@maine.gov

Issuer Information

Seth Nichols 207-287-4586 ext. SETH.NICHOLS@MAINE.GOV

Requestor Information

Andrew Giroux 207-287-4593 ext. andrew.j.giroux@maine.gov

Agreement Reporting Categories

Authorized Departments

18P PURCHASING-BUR OF GENERAL SVCS

Vendor Information

Vendor Line #: 1

Vendor ID

VS0000026224

Vendor Name

Liquidity Services Operations, LLC

Alias/DBA

Gov Deals

Vendor Address Information

100 Capitol Commerce Blvd, Suite 110,

Montgomery, AL 36117

US

Vendor Contact Information

Alicia Andrews
800-613-0156 ext. 4470
vendor@govdeals.com

Payment Discount Terms

0 Days
0 Days
0 Days
0 Days

Commodity Information

Vendor Line #: 1

Vendor Name: Liquidity Services Operations, LLC

Commodity Line #: 1

Commodity Code: 05557

Commodity Description: NASPO ValuePoint CONTRACT ON-LINE SURPLUS AUCTION SERVICES

Commodity Specifications:

Commodity Extended Description: NASPO ValuePoint Master Agreement #20-00000-22-000051AB

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
Contract Amount	Service Start Date	Service End Date
0.00	10/25/22	09/01/24
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Commodity Terms and Conditions

Vendor Line #: 1

Commodity Line #: 1

T&C #: 165

T&C Name: Payment Terms

T&C Details: Net 30

Terms and Conditions

Agreement Terms and Conditions

T&C #: 165

T&C Name:

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:
Jaime C. Schorr 10/26/2022
6D6437754DD0459...

Signature Date

Jaime C. Schorr, Chief Procurement Officer

and

Liquidity Services Operations, LLC

DocuSigned by:
Scott Starcher 10/27/2022
EF7FF21D62454EA...

Signature Date

Scott Starcher, Vice President, Operations

NASPO ValuePoint
PARTICIPATING ADDENDUM



ON-LINE AUCTION SERVICES
 Led by the **State of New Mexico**

Master Agreement #: **20-00000-21-00051AB**
 Contractor: **Liquidity Services Operations LLC dba GovDeals**
 Participating Entity: **STATE OF MAINE**

This Participating Addendum is entered into by Contractor and The State of Maine (collectively, the "Parties").

Scope and Participation:

1. Scope:
 - This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.
2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Maine and Contractor for On-Line Auction Services. 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.
4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

CONTRACTOR:

Name:	Rebecca Murphy
Address:	100 Capitol Commerce Blvd., Suite 110, Montgomery, AL 36117
Telephone:	(980) 254-8908
Fax:	
Email:	rmurphy@govedeals.com

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 Led by the **State of New Mexico**

PARTICIPATING ENTITY:

Name:	William Allen
Address:	SHS #9, Burton Cross Office Building, Augusta ME 04333
Telephone:	207-624-7871
Fax:	
Email:	wje.allen@maine.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.

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:**

Administrative Fee Rebate: Liquidity Services Operations LLC dba GovDeals will provide a 1.5% Base Administrative Fee. The Fee shall be paid quarterly, forty-five (45) days after the close of the quarter, on all purchases under the Price Agreement, less any freight, taxes, returns, credits or adjustments

State of Maine Additional Standard Master Agreement Terms and Conditions

A. DEFINITIONS: The following definitions are applicable to these standard terms and conditions:

- a. The term "Buyer" or "State" shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
- b. The term "Department" or "DAFS" shall refer to the State of Maine Department of Administrative and Financial Services.
- c. The term "Bureau" or "BGS" shall refer to the State of Maine Bureau of General Services.
- d. The term "Division" shall refer to the State of Maine Division of Purchases.
- e. The term "Contractor", "Vendor", or "Provider" shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
- f. The term "Contract" or "Agreement" shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.

B. 2. WARRANTY: The Contractor warrants the following:

- a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and

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- b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.
- C. Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.
- D. **3. TAXES:** Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.
- E. **PACKING AND SHIPMENT:** Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- F. **DELIVERY:** Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor

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has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

- G. **FORCE MAJEURE:** The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.
- H. **INSPECTION:** All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.
- I. **INVOICE:** The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.
- J. **ALTERATIONS:** The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the

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performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

- K. **TERMINATION:** The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:
- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
 - b. If Contractor fails to deliver specified materials or services, or
 - c. If Contractor fails to perform any of the provisions of this Agreement, or
 - d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
 - e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
 - f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.
- L. In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.
- M. **NON-APPROPRIATION:** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.
- N. **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

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- O. **INTERPRETATION:** This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.
- P. **DISPUTES:** The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.
- Q. **ASSIGNMENT:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.
- R. **STATE HELD HARMLESS:** The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.
- S. **SOLICITATION:** The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.
- T. **WAIVER:** The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.
- U. **MATERIAL SAFETY:** All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

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- V. **COMPETITION:** By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.
- W. **INTEGRATION:** All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.
- X. 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.
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.

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

PARTICIPATING ENTITY

CONTRACTOR

Signature: DocuSigned by: <i>Jaime C. Schorr</i> 6D6437754DD0459...	Signature: DocuSigned by: Scott Starcher EF7FF21D62454EA...
Name: Jaime Schorr	Name: Scott Starcher
Title: Chief Procurement Office	Title: Vice President, Operations
Date: 10/24/2022	Date: 10/25/2022

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.



**State of New Mexico
General Services Department
State Purchasing Division**

Agreement Cover Page

Awarded Vendor:
0000145908
Liquidity Services Operations LLC, dba GovDeals
100 Capitol Commerce Blvd., Suite 110
Montgomery, AL 36117

Contact: Rebecca Murphy
Email: rmurphy@govdeals.com
Telephone No.: (980) 254-8908

Agreement Number: 20-00000-22-000051AB

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

Ship To:
As Requested

Procurement Specialist: Vanessa LeBlanc *VL*

Telephone No.: (505) 629-9525

Email: Vanessa.LeBlanc@state.nm.us

Invoice:
As Requested

For questions regarding this agreement please contact:
Vanessa LeBlanc (505) 629-9525

Title: On-Line Auction Services

Term: September 2, 2022 thru September 1, 2024

The attached Master Agreement is made subject to the “terms and conditions” as indicated.

Liquidity Services Operations LLC, dba GovDeals has been awarded Tiers 1 & 2.

JSR



Master Agreement No. 20-00000-22-00051AB

THIS AGREEMENT for On-Line Auction Services is entered into by and between the **State of New Mexico, General Services Department** (hereinafter the “Lead State” or a “Participating Entity” and **Liquidity Services Operations LLC dba GovDeals** (hereinafter the “Contractor”).

Contractor Information:

Liquidity Services Operations LLC

Db a GovDeals

100 Capitol Commerce Blvd., Ste 110

Montgomery, AL 36117

Contact: Rebecca Murphy

Telephone: (980) 254-8908

Email: Rmurphy@govdeals.com

NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity’s Participating Addendum (“PA”);
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Specifications or Statement of Work;
- (5) The Solicitation or, if separately executed after award, the Lead State’s bilateral agreement that integrates applicable provisions;
- (6) Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Award means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is a division of the National Association of State Procurement Officials (“NASPO”), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate.

Price Agreement means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

Procuring Agency means all agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

Project means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

Staff means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors' company.

State Agency means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.

State Purchasing Agent means the Director of the State Purchasing Division of the General Services Department for the State of New Mexico.

Subcontractor means a business agreeing to perform part or all the obligations of the awarded Contractor. This does not include those persons provided to Purchasing Entities under the awarded contracts to fulfill On-Line Auction Services.

NASPO ValuePoint Program Provisions

I. Term of Master Agreement

- 1.1** **The initial term** of the Contract will be two (2) years with the option, upon mutual written agreement, for four (4) additional renewal periods of two (2) years each. The State reserves the right to implement renewal periods of other duration if the State finds it advantageous to do so. In no way shall this agreement exceed ten (10) years. Upon mutual agreement, the contract may be extended or amended.
- 1.2** **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 1.3** **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-up competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-up master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

II. Order of Precedence

- 2.1** **Order.** Any Order placed under this Master Agreement will consist of the following documents:
 - 2.1.1** A Participating Entity's Participating Addendum ("PA");
 - 2.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 2.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;

- 2.1.4** The Solicitation or, if separately executed after award, the Lead State’s bilateral agreement that integrates applicable provisions;
- 2.1.5** Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 2.2** **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 2.3** **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

III. Participants and Scope

- 3.1** **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 3.2** **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section II. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.
- 3.3** **Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 3.4** **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 3.5** **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

- 3.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 3.7 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- 3.8 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 3.9 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

IV. NASPO ValuePoint Provisions

- 4.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.
- 4.2 Administrative Fees**
- 4.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping) and other revenues including commission fees charged. The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.
- 4.2.2 State Imposed Fees.** Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless

agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

4.3 NASPO ValuePoint Summary and Detailed Usage Reports

4.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org> or other method provided by NASPO ValuePoint. All sales of products or services under this Master Agreement must be reported as cumulative totals by state, including all revenues collected through commission fees charged. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales or other revenues, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

4.3.2 Detailed Sales Data. Contractor shall also report detailed sales and commission revenue data by completing and submitting the reporting template attached to the RFP as Attachment K or as otherwise required by NASPO ValuePoint. Reports are due on a quarterly basis and must be received by NASPO ValuePoint no later than thirty (30) days after the end of the reporting period. Reports must be delivered to NASPO ValuePoint electronically through a designated portal or other method as determined by NASPO ValuePoint. Detailed sales data reports must include sales information for all sales/revenues under Participating Addenda executed under this Master Agreement.

4.3.3 Executive Summary. Contractor shall, upon request, provide NASPO ValuePoint with an executive summary that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

4.3.4 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

4.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

4.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum

process, and the manner in which eligible entities can participate in the Master Agreement.

- 4.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- 4.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 4.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 4.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.
- 4.5 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.
- 4.6 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.
- 4.7 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint

related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

V. Pricing & Payment

- 5.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
- 5.1.1** All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 5.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 90 days prior to the effective date.
- 5.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
- 5.1.4** No retroactive adjustments to prices or rates will be allowed.
- 5.2 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

VI. Ordering

- 6.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, invoices, and correspondence.
- 6.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated, or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 6.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 6.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

- 6.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 6.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
 - 6.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
 - 6.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
 - 6.5.4** Notwithstanding the expiration, cancellation, or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
 - 6.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 6.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 6.6.1** The services or supplies being delivered;
 - 6.6.2** A billing address;
 - 6.6.3** Purchasing Entity contact information;
 - 6.6.4** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 6.6.5** A not-to-exceed total for the Products or Services being ordered; and
 - 6.6.6** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 6.7 Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 6.8 Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is

placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VII. Reserved

VIII. Inspection and Acceptance

- 8.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 8.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 8.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
- 8.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.
- 8.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 8.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 8.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
- 8.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.
- 8.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

- 8.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 8.5.4** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

IX. Warranty

- 9.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section will apply.
- 9.2 Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 9.3 Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 9.4 Rights Reserved.** 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.
- 9.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section VIII.

X. Product Title

- 10.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 10.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 10.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and

dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it (“Pre-existing Intellectual Property”). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XI. Indemnification

- 11.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys’ fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.
- 11.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees (“Indemnified Party”), from and against claims, damages or causes of action including reasonable attorneys’ fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity (“Intellectual Property Claim”).
- 11.2.1** The Contractor’s obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 11.2.1.1** provided by the Contractor or the Contractor’s subsidiaries or affiliates;
 - 11.2.1.2** specified by the Contractor to work with the Product;
 - 11.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - 11.2.1.4** reasonably expected to be used in combination with the Product.
- 11.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 11.2.3** The Indemnified Party shall furnish, at the Contractor’s reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or

settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

- 11.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XII. Insurance

- 12.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 12.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 12.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 12.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 12.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 12.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 12.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 12.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 12.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30)

calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

- 12.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIII. General Provisions

13.1 Records Administration and Audit

13.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

13.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

13.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

13.2 Confidentiality, Non-Disclosure, and Injunctive Relief

13.2.1 Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

13.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this

Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

13.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

13.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

13.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

13.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

13.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

13.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

- 13.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.
- 13.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- 13.2.4 Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- 13.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.
- 13.2.6 Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.
- 13.3 Assignment/Subcontracts**
- 13.3.1** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- 13.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.
- 13.4 Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.
- 13.5 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or

understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

13.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

13.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

13.8 Defaults and Remedies

13.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

13.8.1.1 Nonperformance of contractual requirements;

13.8.1.2 A material breach of any term or condition of this Master Agreement;

13.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

13.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

13.8.1.5 Any default specified in another section of this Master Agreement.

13.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

- 13.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
- 13.8.3.1** Any remedy provided by law;
 - 13.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
 - 13.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 13.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 13.8.3.5** Suspension of Contractor's performance; and
 - 13.8.3.6** Withholding of payment until the default is remedied.

13.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

13.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

13.10 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 public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

13.11 No Waiver of Sovereign Immunity

- 13.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 13.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

13.12 Governing Law and Venue

- 13.12.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 13.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.
- 13.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.
- 13.13 Assignment of Antitrust Rights.** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: *Duffy Rodriguez*
JOHN GARCIA, Cabinet Secretary
General Services Department

Date: 9/2/2022

By: *Steve Kranzusch*
STEVE KRANZUSCH, vice President
Liquidity Services Operations LLC dba GovDeals

Date: 8/31/2022

Approved for legal sufficiency:

By: *Paul Kippert*
PAUL KIPPERT
General Services Department, State Purchasing Division

Date: 9/1/2022

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

CRS ID Number: 02-474900-00-1

NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

By: *Ann Marie Lucero*
Taxation and Revenue

Date: 8/31/2022

This Agreement has been approved by the State Purchasing Agent of New Mexico:

Valerie Paulk

State Purchasing Agent

9/2/2022

Date

X This Agreement is signed on behalf of the State Purchasing Agent

ATTACHMENT A – SCOPE OF WORK

1. Awarded Tiers.

- A. **Tier 1 – Use of Website Only.** Use of an Offeror's website as a marketing and/or publicizing tool by a Purchasing Entity. Includes both the Contractor's product (the on-line auction system) as well as the Contractor's services in either a simple use of an Offeror's website as a marketing tool, a publicizing tool by a Purchasing Entity
 - a. Will allow Participating Entity options for posting photos and details of the property on the website and perform all work in auctioning, transporting and administration of the property, including handling of any related titles and funds.
- B. **Tier 2 – Use of Website and Accounting.** Includes all items and services noted in Tier 2 plus an accounting operation.

II. Minimum System Requirements.

A. Tier 1 – Use of Website Only.

- 1. The Contractor shall supply a fully functional, customizable and secure web-based auction software service for the purpose of reallocating and/or selling the State's surplus property.
- 2. The Contractor will provide and absorb all cost of a secure hosting facility to operate the web-based "Software as a Service" (SaaS) application for an online auction system and allow the Lead State or other Purchasing Entity full access to the account. The Lead State or other Purchasing Entity will not be required to install any additional computer hardware or software at their location. The only requirements will be that the Lead State or other Purchasing Entity have an internet connection via a common web browser and a digital camera. The auction service shall not interact with any Lead State or other Purchasing Entity computer hardware, software or data base systems other than accessing its account through a common web browser. Offeror must submit a statement of concurrence with this requirement.
- 3. All hardware, software and servers needed to operate the online auction service will be provided by the Contractor. The Contractor must give the Lead State and Purchasing Entity full access to their assigned online auction account and the Lead State or other Purchasing Entity must be allowed to load their auction items via a common internet browser. In the alternative, the Offeror must be able to create the listing in a timely fashion (especially for Tier Three, but Purchasing Entities in other Tiers may wish to leverage this service as well.) The system should be available to the Lead State or other Purchasing Entity 24 hours a day, 7 days a week. Items the Lead State or other Purchasing Entity wishes to sell can be loaded at any time that best suits the schedule of the Lead State or other Purchasing Entity. Offeror must submit a statement of concurrence with this requirement.
- 4. All maintenance and upgrades to the hardware and software that the Contractor provides over the term of the contract shall be made at no cost to the Lead State or other Participating Entity. Offeror must submit a statement of concurrence with this requirement.
- 5. The Contractor will supply all operating software and applications needed for the auction site to function. Offeror must submit a statement of concurrence with this requirement.

6. All connectivity to the internet shall be accessible through industry standard internet connections, web browsers and email. The system must allow access from Windows based systems. Offeror must submit a statement of concurrence with this requirement.
7. Contractor shall provide the Purchasing Entity the ability to create users with varying levels of access permission(s).
8. Contractor software service shall provide the ability for the following:
 - a. The ability to create listings, determine category, select duration, input a description and upload photos of assets;
 - b. Provide the auction-bidder/buyer the ability to register, log-in, view photographs, descriptions and technical specifications of items being bid on during the auction process;
 - c. Provide real time information regarding participating auction bidder/buyer during the auction and once the auction has closed;
 - d. Provide the Purchasing Entity with the ability to revise existing listings, copy existing listing for creation of new listing and the ability to retract or end listings;
 - e. Provide an option/platform for automated email notices based on templates provided by the Purchasing Entity to be generated by the system at the end or closing of auctions. These automated email notices should only be accessed by specific administrative roles and the specific template should be selectable at the time of auction closing;
 - f. Auction multiple line items per lot;
 - g. Auction one asset per listing;
 - h. Add or remove the sales tax for the winning bids;
 - i. List specific times for public viewing and different times for pick-up;
 - j. List multiple locations and complete descriptions including terms of sale;
 - k. List multiple starting and ending times;
 - l. Embed "You Tube" video or other video images into auction listings;
 - m. Provide auction detail and summary data to the Client Agency;
 - n. Provide detailed reporting and records in both paper and electronic format;
 - o. Set reserve and minimum bid amounts for asset to be sold;
 - p. Block or otherwise decline auction-bidders/buyers who have defaulted on previous bids;
 - q. Offer asset to the next highest auction bidder/buyer if an auction-bidder/buyer defaults;
 - r. Auction-bidder/buyer to estimate shipping charges so that they can bid more efficiently knowing in advance the shipping expenses;
 - s. Provide private auction functionality to allow the Purchasing Entity to sell assets to a select group of pre-qualified/screened auction-bidder/buyers;
 - t. Track payment and payment collection;
 - u. Provide an audit trail of all surplus asset sales and transactions processed through the Contractor's website to the Purchasing Entity;
 - v. Host software and provide technology upgrades as they become available and;
 - w. Provide notification of sales, transactions, and revenues to the Purchasing Entity and or State Agency;
 - x. Please describe any applicable value added features of your software
9. Contractor shall provide all support, including email and telephone support needed to operate the auction site. Live, 24/7 support via online chat, email or toll-free phone. Offeror must submit a statement of concurrence with this requirement.

10. The system should allow the Lead State or other Purchasing Entity to post their own Terms and Conditions for each asset offered for sale and also provide a quick link to the Lead State or other Purchasing Entity Terms and Conditions. The systems must also provide a section for posting special instructions such as when payment should be made, etc. Offeror must submit a statement of concurrence with this requirement.
11. Contractor shall provide all security systems, anti-virus and firewalls capable of preventing the hacking of any auction information from the auction servers, capable of preventing the assimilation or distribution of viruses and other programs and capable of preventing any bidder from learning the identity of any other bidder. Offeror must submit a written narrative explaining how the Offeror shall meet this requirement. The information supplied in this narrative will be scored.
12. Contractor shall provide contingency plans to backup information and recover information. The Contractor shall have a disaster recovery plan that covers internet failure, electricity failure or systems failures.
13. Contractor's system should allow the Lead State or other Purchasing Entity to charge freight costs if the bidder is unable to pick up the winning bid items. Offeror must submit a statement of concurrence with this requirement.
14. Contractor's systems must be capable of withdrawing and cancelling an auction without penalty. The Contractor shall describe its system of notifying bidders if an auction has been withdrawn and cancelled.
15. Licensure and Insurance. Contractor must be properly licensed and insured. Contractor shall provide proof of required licensing, as applicable, in Lead State or other Participating Entity, including all applicable licensure and bonding for the proposed services at the time of contracting.
16. Training.
 - a. Contractor shall provide on-site and/or online training to the Purchasing Entity users of the system at no cost, and shall work with members of the Client Agency's Information Technology group to ensure adequate testing and functionality with the State's websites. Offeror must submit a statement of concurrence with this requirement.
 - b. Contractor shall provide the Purchasing Entity end user training in a group type forum via an online presentation and training program. Users shall be able to interact and voice questions during the presentation, and on certain occasions video conferencing tools may be implemented. Offeror must submit a statement of concurrence with this requirement.
 - c. Contractor shall coordinate and provide on-site training and/or seminars on an as needed basis throughout the term of the contract period. Offeror must submit a statement of concurrence with this requirement.
 - d. Contractor shall provide user manuals and other written support documentation as requested from the Client Agency. There shall be no limit on the number or location of on-site user training. Offeror must submit a statement of concurrence with this requirement.

- e. Contractor shall provide the Purchasing Entity with 24/7 administrative access to their accounts including: current and held auctions completed and cancelled listings, bidder/buyer information, and a comprehensive reporting suite of common activity reports. Offeror must submit a statement of concurrence with this requirement.

17. Customer Support.

- a. Contractor will provide easily accessible, highly responsive technical support and customer service to the Participating Entity. Typical response time is under an hour, and Contractor commits to always respond within 24 hours. Purchasing Entity's Account Manager may be reached by cell phone or email 24 hours a day, 7 days a week. If for any reason, your Account Manager is not immediately available, Purchasing Entity may contact GovDeals' Client Help Desk. Staffed by fully trained Client Services Representatives, the Help Desk provides technical support and problem-solving by toll-free phone, live chat, and email.

B. Tier 2 – Use of Website and Accounting.

When servicing Tier 2 Contractor must meet all requirements listed in Tier 1 as well as the following:

- 1. Accounting. Contractor shall provide a complete accounting of items from pick up to final sale or disposition.
 - a. Contractor shall be fully responsible for the collection of monies and reimbursement to the Participating Entity.
 - b. Contractor shall collect and process all taxes due.
 - c. Contractor shall keep records of all financial matters pertaining to the sales in accordance with generally accepted accounting principles. The financial records must be made available to representatives of the Lead State or other Purchasing Entity or any other governmental agency with jurisdiction to audit. The records must be maintained for a period of six (6) years after the term of the Master Agreement.
- 2. Revenue Collection and Payments.
 - a. Contractor accepts payments from winning Bidders by credit card (Visa, MasterCard, Discover and American Express), PayPal and Wire Transfer. (All payments over \$4,999 must be made by Wire Transfer.) These methods of payment are consistent with the payment methods generally available to Internet shoppers and allow for all of the advantages users of these payment methods are accustomed to enjoying. The ability to pay via electronic funds rather than by purchasing a cashier's check or money order and then expediting delivery of these funds is considered to be an advantage by most Internet shoppers. GovDeals also accepts payment through use of P-cards.
 - b. The transaction cost for Contractor bidders who purchase from our Clients who use our Financial Settlement Service (FSS) is included in the proposed buyer's premium; therefore there will be no additional fee charged to the State of New Mexico and Participating Entities for collection of auction proceeds. For our Clients who utilize Contractor's Financial Settlement Services (Price Proposal, Exhibit A), Contractor agrees to remit auction proceeds weekly and to accept all liability for fraud and chargebacks that occur.

This means that Contractor is willing to guarantee that our Clients will never lose any money or assets using our Financial Settlement Services.

- c. Contractor is fully PCI compliant and does not store any financial data from buyers. Fees and Buyer's Premium amounts are discussed in depth in Contractor's Price Schedule.
- d. Each week, a payment totaling the sales (minus agreed-upon buyer's premium and sales taxes collected) of all assets paid for and picked up in the previous week will be remitted to the Client. If required by a Participating Entity's policy, Contractor will remit gross proceeds collected less applicable sales tax and then bill the Participating Entity for the buyer's premium.
- e. Clients have a choice of remittance by check or Automated Clearing House (ACH) direct deposit. Contractor does not withhold payment of its Clients' auction proceeds during the 30-day charge-back liability window; our charge-back liability is funded using a portion of the Buyers' Premium charged to buyers when they make electronic payments.

ATTACHMENT C - PRICE SCHEDULE

A. Tier 1 – Use of Website Only.

1. Contractor / GovDeals offers a success-based fee structure that is charged only on successfully completed auctions. There will be no additional fees or charges for our standard services. There will be no fee if an auction does not result in a completed sale, and there will be no charges to the State or Participating Entity for any marketing efforts, training, software upgrades, or consultation and client support provided on-site or remotely.
2. Tier One enables the Participating Entity to collect its own payments and be invoiced by GovDeals (Non-FSS). If the Entity prefers to utilize GovDeals' system and service with our payment collection and remittance service, Financial Settlement Services (FSS) included, the Entity should utilize our Tier Two services.
3. GovDeals is strongly encouraging use of our Tier Two service for the following reasons:
 - The majority of states now require applicable tax collection on internet purchases, to include the purchase of government-owned surplus assets. Some states extend tax collection to vehicles.
 - This expansion of tax collection creates an added level of responsibility and additional liability for state surplus operations.
 - Tier Two service transfers this responsibility and liability to GovDeals – we become the Marketplace Facilitator for your surplus operation.
 - As your Marketplace Facilitator, GovDeals assumes responsibility and liability for:
 - ✓ Monitoring tax rates and tax law changes to ensure that the proper sales tax is applied to each auction based on the type of asset being sold and its location.
 - ✓ Maintenance and application of tax exemption status – we collect buyers' tax- exempt documents, apply these accordingly, and ensure these remain current.
 - ✓ Remittance of taxes to the proper taxing authorities.
4. Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined below. The pricing provided below is GovDeals' ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case- by-case basis based on asset type, asset value, or sales volume.

5. Pricing: US- 0% Seller Fee with 12.5% Buyer's Premium

6. Elevated Services Pricing: Offered on a case-by-case basis. GovDeals recognizes that government agencies have different needs. In this spirit, we offer ceiling pricing of an additional 20% fee to accommodate special circumstances warranting that GovDeals provides various additional services.

a. These services may include, in addition to the services offered herein, taking photographs/videos of assets for promotion and sale purposes; uploading descriptive content and media to create auction listings; tasks such as transportation and storage of assets (limited to areas where such service is offered), etc.

b. Note: When a client requests additional services, GovDeals will review the client's specific needs, projected sales volume, and other relevant

details of the prospective account to determine service availability and pricing on a per-case basis.

7. Real Estate related Services Pricing: Real estate category fees are based on the specific type and the potential value of each parcel or the potential aggregated value of the opportunity.

GovDeals’ fee for the auction of real estate assets is lower than the 12.5% ceiling fee proposed.

8. Rebate: Entities may be eligible for GovDeals’ Volume Discount Program (VDP). This program pays a rebate on completed sales. The volume discount payments are applied to each transaction, or if requested, may be remitted annually. If reduced upfront pricing is offered to a specific client for all assets and/or for higher-valued assets such as aviation assets or asset categories such as real estate, a rebate will not be paid on these sales since their fee has already been discounted.

9. TIER ONE: Use of an Offeror’s website as a marketing and/or publicizing tool by a Purchasing Entity:

Item	Description of Commodity and/or Services	Percentage Fee to Buyer	Percentage Fee to Seller
1.	<p>Online Auction Fee</p> <p><i>Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined herein. The pricing provided herein is GovDeals’ ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case-by- case basis based on asset type, asset value, or sales volume.</i></p> <p><i>*Most often clients have buyers pay GovDeals’ Fee as a Buyer’s Premium, making the percentage fee to the Seller 0%. Or this fee can be paid entirely by the seller or split.</i></p>	12.5%	0%*
2.	<p>Please list any percentage fees that are different from the percentage fee listed above or percentage fees that are specific to an auction category (example: vehicles, heavy equipment, real estate) and/or any additional percentage Fees (charged to either Buyer or Seller)</p>		

2a.	<p>Volume Discount Program/Fee Rebate**</p> <p><i>The Percentage of the standard auction fee proposed that is returned to sellers is determined on a case-by-case basis with a minimum rebate of 1.25%.</i></p> <p><i>Entities who use GovDeals or begin using GovDeals at a fee that is below 12.5% based on asset type, asset value, or their aggregated sales volume are already receiving a rebate in the form of a fee reduction and are therefore not eligible for an additional rebate.</i></p>	0%	-1.25%**
2b.	Additional Services (Customized Services to meet specific client needs) This additional fee may be split between buyer and seller.	Additional Fee determined on a case-by-case basis with a 20% Ceiling	

TIER ONE

		Unit of Measure	Total Cost/% (if applicable)
3.	Value Added Services: (Any services not specified above. If the price for these services is included in above charges, mark Total Cost field, INCL.)		
3a.	Training (On-Site or Remote)		INCL
3b.	On-Call Support, & Auction Guidance/Best Practices		INCL
3c.	Asset Marketing Services		INCL
3d.	Custom Landing Page and Custom-Built Templates		INCL
3e.	Real-Time, Audit-Level Reporting Tools & Accounting Support		INCL
3f.	Asset Redistribution Functionality		INCL

B. Tier 2 – Use of Website and Accounting.

1. GovDeals offers a success-based fee structure that is charged only on successfully completed auctions. There will be no additional fees or charges for our standard services. There will be no fee if an auction does not result in a completed sale, and there will be no charges to the State or Participating Entity for any marketing efforts, training, software upgrades, or consultation and client support provided on-site or remotely.
2. Tier Two enables the Participating Entity to utilize GovDeals’ system and service with our payment collection and remittance service, Financial Settlement Service (FSS) included. If the Entity elects to collect its own payments and be invoiced by GovDeals (Non-FSS), the Entity should utilize our Tier One services.
3. GovDeals is strongly encouraging use of our Tier Two service for the following reasons:
 - The majority of states now require applicable tax collection on internet purchases, to include the purchase of government-owned surplus assets. Some states extend tax collection to vehicles.
 - This expansion of tax collection creates an added level of responsibility and additional liability for state surplus operations.
 - Tier Two service transfers this responsibility and liability to GovDeals – we

become the Marketplace Facilitator for your surplus operation.

- As your Marketplace Facilitator, GovDeals assumes responsibility and liability for:
 - ✓ Monitoring tax rates and tax law changes to ensure that the proper sales tax is applied to each auction based on the type of asset being sold and its location.
 - ✓ Maintenance and application of tax exemption status – we collect buyers’ tax- exempt documents, apply these accordingly, and ensure these remain current.
 - ✓ Remittance of taxes to the proper taxing authorities.

4. Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined below. The pricing provided below is GovDeals’ ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case- by-case basis based on asset type, asset value, or sales volume.

5. Pricing: US- 0% Seller Fee with 12.5% Buyer's Premium

6. Elevated Services Pricing: Offered on a case-by-case basis. GovDeals recognizes that government agencies have different needs. In this spirit, we offer ceiling pricing of an additional 20% fee to accommodate special circumstances warranting that GovDeals provides various additional services.

A. These services may include, in addition to the services offered herein, taking photographs/videos of assets for promotion and sale purposes; uploading descriptive content and media to create auction listings; tasks such as transportation and storage of assets (limited to areas where such service is offered), etc.

B. Note: When a client requests additional services, GovDeals will review the client’s specific needs, projected sales volume, and other relevant details of the prospective account to determine service availability and pricing on a per-case basis.

7. Real Estate related Services Pricing: Real estate category fees are based on the specific type and potential value of each parcel or the potential aggregated value of the opportunity. GovDeals’ fee for the auction of real estate assets is lower than the 12.5% ceiling fee proposed.

8. Rebate: Entities may be eligible for GovDeals’ Volume Discount Program (VDP). This program pays a rebate on completed sales. The volume discount payments are applied to each transaction, or if requested, may be remitted annually. If reduced upfront pricing is offered to a specific client for all assets and/or for higher-valued asset categories such as real estate, a rebate will not be paid on these sales since the fee has already been discounted.

9. TIER TWO: Use of an Offeror’s website and accounting operation by a Purchasing Entity

Participating Entity will post photos and details of the property on the website and perform all work in auctioning, transporting and administration of the property, including handling of any related titles and funds.

Item	Description of Commodity and/or Services	Percentage Fee to Buyer	Percentage Fee to Seller

1.	<p>Online Auction Fee</p> <p><i>Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined herein. The pricing provided herein is GovDeals' ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case-by- case basis based on asset type, asset value, or sales volume.</i></p> <p><i>*Most often clients have buyers pay GovDeals' Fee as a Buyer's Premium, making the percentage fee to the Seller 0%. Or this fee can be paid entirely by the seller or split.</i></p>	12.5%	0%*
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2.	<p>Please list any percentage fees that are different from the percentage fee listed above or percentage fees that are specific to an auction category (example: vehicles, heavy equipment, real estate) and/or any additional percentage Fees (charged to either Buyer or Seller)</p>		
2a.	<p>Volume Discount Program/Fee Rebate</p> <p><i>The Percentage of the standard auction fee proposed that is returned to sellers is determined on a case-by-case basis with a minimum rebate of 1.25%.</i></p> <p><i>**Entities who use GovDeals or begin using GovDeals at a fee that is below 12.5% based on asset type, asset value, or their aggregated sales volume are already receiving a rebate in the form of a fee reduction and are therefore not eligible for an additional rebate.</i></p>	0%	-1.25%**
2b.	<p>Additional Services (Customized Services to meet specific client needs) This additional fee may be split between buyer and seller.</p>	Additional Fee determined on a case-by-case basis with a 20% Ceiling	

TIER TWO

		Unit of Measure	Total Cost/% (if applicable)
3.	<p>Value Added Services: (Any services not specified above. If the price for these services is included in above charges, mark Total Cost field, INCL.)</p>		
3a.	Shouldering Liability for Fraud/Chargebacks		INCL
3b.	Marketplace Facilitator – Responsible and Liable for Tax Collection and Remittance		INCL
3c.	Training, On-Call Support, & Auction Guidance/Best Practices		INCL

3d.	Asset Marketing Services		INCL
3e.	Custom Landing Page and Custom-Built Templates		INCL
3f.	Real-Time, Audit-Level Reporting Tools & Accounting Support		INCL
3e.	Asset Redistribution Functionality		INCL

Certificate Of Completion

Envelope Id: 274CBBDCBCC4E9481BD5C86E246D52D	Status: Completed
Subject: Please DocuSign: 20-00000-22-00051AB On-Line Auction Services	
Source Envelope:	
Document Pages: 32	Signatures: 5
Certificate Pages: 6	Initials: 2
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Vanessa LeBlanc
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	Vanessa.LeBlanc@state.nm.us
	IP Address: 98.60.102.6

Record Tracking

Status: Original	Holder: Vanessa LeBlanc	Location: DocuSign
8/25/2022 8:56:00 AM	Vanessa.LeBlanc@state.nm.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign


Signer Events

Signer Events	Signature	Timestamp
Travis Dutton- Leyda		Sent: 8/25/2022 9:11:25 AM
Travis.Dutton-Leyda@state.nm.us		Viewed: 8/26/2022 4:52:38 PM
IT & Construction Bureau Chief		Signed: 8/26/2022 4:52:45 PM

New Mexico General Services, State Purchasing Division
Signature Adoption: Pre-selected Style
Using IP Address: 73.26.88.117

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Steve Kranzusch		Sent: 8/26/2022 4:52:47 PM
govsteve@gmail.com		Resent: 8/31/2022 9:58:08 AM
Security Level: Email, Account Authentication (None)		Resent: 8/31/2022 10:33:34 AM
		Resent: 8/31/2022 10:57:09 AM
		Viewed: 8/31/2022 10:58:53 AM
		Signed: 8/31/2022 11:01:38 AM

Signature Adoption: Pre-selected Style
Using IP Address: 69.171.205.139

Electronic Record and Signature Disclosure:
Accepted: 8/31/2022 10:58:53 AM
ID: 5f802a63-966c-43f3-9eae-2f0531e0f26f

Ann Marie Lucero		Sent: 8/31/2022 11:01:40 AM
AnnMarie.Lucero@state.nm.us		Viewed: 8/31/2022 1:03:16 PM
Tax Examiner Supervisor		Signed: 8/31/2022 2:18:01 PM

State of New Mexico, Dept of Information Technology
Signature Adoption: Pre-selected Style
Using IP Address: 164.64.133.193

Signing Group: 33300 - CRS Verification

Security Level: Email, Account Authentication (None)


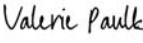

Electronic Record and Signature Disclosure:
Accepted: 6/2/2020 2:28:54 PM
ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910

Paul Kippert		Sent: 8/31/2022 2:18:03 PM
Paul.Kippert@state.nm.us		Viewed: 9/1/2022 10:30:37 AM
State of New Mexico, Dept of Information Technology		Signed: 9/1/2022 10:30:52 AM

Signature Adoption: Pre-selected Style
Using IP Address: 164.64.62.10

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
<p>Accepted: 9/9/2020 1:49:21 PM ID: 666bb93b-caef-4912-aa64-05b4aa8bcffb</p> <p>Duffy Rodriguez Duffy.Rodriguez@state.nm.us Acting Cabinet Secretary State of New Mexico, Dept of Information Technology Signing Group: 35000 - Cabinet Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 6/10/2021 9:32:00 AM ID: 4e0b31be-fba7-4a31-92c3-4b1f0898eaaa</p>	 <p>Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10</p>	<p>Sent: 9/1/2022 10:30:54 AM Resent: 9/2/2022 7:50:28 AM Viewed: 9/2/2022 9:20:06 AM Signed: 9/2/2022 9:20:29 AM</p>
<p>Valerie Paulk valerie.paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff</p>	 <p>Signature Adoption: Pre-selected Style Using IP Address: 67.0.254.210</p>	<p>Sent: 9/2/2022 9:20:31 AM Viewed: 9/2/2022 9:21:10 AM Signed: 9/2/2022 9:22:57 AM</p>
<p>Vanessa LeBlanc vanessa.leblanc@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 6/2/2020 7:02:26 AM ID: 174ce339-a45c-4eb9-8489-b3f5ced3d8e4</p>	 <p>Signature Adoption: Pre-selected Style Using IP Address: 98.60.102.6</p>	<p>Sent: 9/2/2022 9:22:59 AM Viewed: 9/2/2022 9:23:25 AM Signed: 9/2/2022 9:24:24 AM</p>

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/25/2022 9:11:25 AM
Certified Delivered	Security Checked	9/2/2022 9:23:25 AM
Signing Complete	Security Checked	9/2/2022 9:24:24 AM
Completed	Security Checked	9/2/2022 9:24:24 AM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.