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State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000168797
Abacus Service Corporation
PO Box 204653
Dallas, TX 75320

Email: lori@abacusservice.com
Telephone No.: (248) 216-1360

Number**: 20-00000-21-00021AB**

Amendment No.**: One**

Term**: August 15, 2022 – August 14, 2026**

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested

Procurement Specialist**: Theresa Mendibles**

Telephone No.**: (505) 795-1894**

Email: **theresa.mendibles@gsd.nm.gov**

TM

Title**: Temporary Employment Services**

This amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from August 15, 2024 to August 14, 2026 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Dorothy Mendonca
Dorothy Mendonca
New Mexico State Purchasing Agent

Date: 6/28/2024

MS

DocuSign

Certificate Of Completion

Envelope Id: AD5CF7D072D04A77B4D0DA99B6F9FBBA
Status: Completed
Subject: Please DocuSign: SPD SPA
Source Envelope:
Document Pages: 1
Signatures: 1
Envelope Originator:
Certificate Pages: 5
Initials: 2
Michael Saavedra
AutoNav: Enabled
1100 S Saint Francis Dr
EnvelopeId Stamping: Enabled
Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)
Michael.Saavedra@gsd.nm.gov
IP Address: 164.64.62.10

Record Tracking

Status: Original
6/28/2024 3:03:07 PM
Holder: Michael Saavedra
Michael.Saavedra@gsd.nm.gov
Location: DocuSign
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
Michael Saavedra michael.saavedra@gsd.nm.gov IT and Const. Bureau Chief New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/4/2020 11:04:51 AM ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 6/28/2024 3:03:43 PM Viewed: 6/28/2024 3:03:48 PM Signed: 6/28/2024 3:03:50 PM
Theresa Mendibles Theresa.mendibles@gsd.nm.gov GSD IT PROCUREMENT SPECIALIST New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/1/2020 5:55:33 PM ID: a1931c7b-74ec-4e14-aa46-8324a6999adc	 Signature Adoption: Pre-selected Style Using IP Address: 174.205.224.215 Signed using mobile	Sent: 6/28/2024 3:03:51 PM Viewed: 6/28/2024 3:16:56 PM Signed: 6/28/2024 3:17:02 PM
Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c	 Signature Adoption: Pre-selected Style Using IP Address: 98.60.107.202	Sent: 6/28/2024 3:17:03 PM Viewed: 6/28/2024 3:51:16 PM Signed: 6/28/2024 3:51:21 PM

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	6/28/2024 3:03:43 PM
Certified Delivered	Security Checked	6/28/2024 3:51:16 PM
Signing Complete	Security Checked	6/28/2024 3:51:21 PM
Completed	Security Checked	6/28/2024 3:51:21 PM

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.SPDinfo@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.SPDinfo@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.SPDinfo@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.SPDinfo@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.

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State of New Mexico
General Services Department
State Purchasing Division

Agreement Cover Page

Awarded Vendor:
0000168797
Abacus Service Corporation
25925 Telegraph Road, Suite 206
Southfield MI 48033

Email: april@abacusservice.com
Telephone No.: (704) 228-0477

Agreement Number**: 20-00000-21-00021AB**

Payment Terms**: Net 30**

F.O.B.**: Destination**

Delivery**: As Requested**

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested at Time of Order

Procurement Specialist**: Natalie Martinez** NM

Telephone No.**: (505) 690-5977**

Email: **Natalie.Martinez1@state.nm.us**

Title**: Temporary Employment Services**

Term**: August 15, 2022 – August 14, 2024**

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

Administrative Support including Office, Clerical and Sales
Industrial/Commercial Workers
Health Clinical
Health Non Clinical

Every State Agency, unless exempted from the authority of the State Purchasing Agent pursuant to Section 13-1-99 NMSA 1978, that utilizes this Statewide Price Agreement for professional services over $5,000 must process the professional services agreement template and accompanying documents through GSD's Contracts Review Bureau.

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PARTICIPATING ADDENDUM

TEMPORARY EMPLOYMENT SERVICES

Led by the **State of New Mexico**

Master Agreement #:	**20-00000-21-00021AB**
Contractor:	**Abacus Service Corporation**
Participating Entity:	**STATE OF NEW MEXICO**

The following services are included in this contract portfolio:

Administrative Support including Office, Clerical and Sales
Industrial/Commercial Workers
Health Care, Clinical
Health Care, Non-Clinical

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

Scope and Participation:

1. Scope:

☒ This Participating Addendum includes the entire scope of the services available through the Master Agreement referenced above.

☐ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above, except the following:

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

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of New Mexico and Contractor for Temporary Employment 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.

☐ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on [date], unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

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

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NASPO ValuePoint

PARTICIPATING ADDENDUM

TEMPORARY EMPLOYMENT SERVICES

Led by the **State of New Mexico**

CONTRACTOR:

Name:	Abacus Service Corporation
Address:	25925 Telegraph Road, Suite 206, Southfield MI 48033
Telephone:	(248) 479-0811
Fax:	248-479-0811
Email:	april@abacusservice.com

PARTICIPATING ENTITY:

Name:	Natalie Martinez, Procurement Specialist Manager
Address:	1100 St. Francis Drive, Room 2016
Telephone:	(505) 690-5977
Fax:	(505) 827-2484
Email:	Natalie.Martinez1@state.nm.us

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:**

1. **Taxes:**

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

2. Retainage.
   Reserved
3. Performance Bond.
   Reserved

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4. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. The initial term of this Agreement shall be for two (2) years, beginning on date approved by the State Purchasing Agent, and shall have an option to extend for three (3) additional renewal periods of one (1) year each, upon mutual agreement by all parties and in accordance with NMSA 1978 §13-1-150.

5. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

6. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice

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being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

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4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

11. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

12. Equal Opportunity Compliance:

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The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. **Workers Compensation:**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. **Applicable Law:**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

15. **Records and Financial Audit:**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

16. **Invalid Term or Condition:**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

17. **Enforcement of Agreement:**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

18. **Non-Collusion:**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

19. **Notices:**

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Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:
State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:
Abacus Service Corporation
April Szlaga, Vice President
25925 Telegraph Road, Suite 206
Southfield MI 48033
april@abacusservice.com
(248) 479-0811

20. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

21. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. Equitable Remedies:

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

24. New Mexico Employees Health Coverage:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement,

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Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://bewellnm.com.

23. Indemnification:

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

24. Default and Force Majeure:

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

26. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor

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from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

27. Inspection of Plant:

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

28. Commercial Warranty:

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

29. Condition of Proposed Items:

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

30. Release:

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

31. Confidentiality:

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. Contractor Personnel:

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement.

Key personnel shall be: April Szlaga

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability,

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experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

33. Incorporation by Reference and Precedence:

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the

State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

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E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

36. Insurance:

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit.

Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.

b. Property damage or combined single limit coverage: $1,000,000.

c. Automobile liability (including non-owned automobile coverage): $1,000,000.

d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

37. Arbitration:

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Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq*.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00%)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. "**Gross total sales"** means any invoiced amount less any applicable state and local taxes.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Participating Addendum, subtotaled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	October 30
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Sample Reports can be found at:
http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

The Vendor shall indicate the contract number **SWPA #20-00000-21-00021AB on the remittance**.

Send payment of fees through U.S. Mail or Courier Delivery to:

ATTN: Compliance Officer
New Mexico State Purchasing Division
1100 St. Francis Drive Room 2016
Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

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.

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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: Valerie Paulk X This Agreement was signed on behalf of the State Purchasing Agent	Signature: April Szlaga
Name: Valerie Paulk	Name: April Szlaga
Title: Deputy Director	Title: Vice President
Date: 9/15/2022	Date: 9/14/2022

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.

DocuSign

Certificate Of Completion

Envelope Id: 8E052144DAF04AB1B2922E140BB79A02
Status: Completed
Subject: 20-00000-21-00021AB Abacus NM Participating Addendum
Source Envelope:
Document Pages: 14 Signatures: 2
Certificate Pages: 5 Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-07:00) Mountain Time (US & Canada)

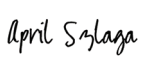
Envelope Originator:
Natalie Martinez
13 Bataan Blvd
Santa Fe, NM 87508
Natalie.Martinez1@state.nm.us
IP Address: 164.64.62.10

Record Tracking

Status: Original
9/13/2022 1:25:51 PM
Holder: Natalie Martinez
Natalie.Martinez1@state.nm.us
Location: DocuSign

Security Appliance Status: Connected
Pool: StateLocal

Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
Natalie Martinez natalie.martinez1@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 9/13/2022 1:42:10 PM Viewed: 9/13/2022 1:42:18 PM Signed: 9/13/2022 1:42:21 PM
April Szlaga April@Abacusservice.com Vice President Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 9/13/2022 4:21:52 PM ID: 3c9e90fa-b7a6-4b91-8cfe-646f4d82ce48	**Completed** Using IP Address: 107.5.165.126	Sent: 9/13/2022 1:42:22 PM Viewed: 9/13/2022 4:21:52 PM Signed: 9/13/2022 4:22:45 PM
April Szlaga April@Abacusservice.com Vice President Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 9/14/2022 6:04:06 PM ID: 542ed0d2-fe4b-4ca0-b04b-65df1acb8580	 Signature Adoption: Pre-selected Style Using IP Address: 107.5.165.126	Sent: 9/14/2022 10:10:24 AM Viewed: 9/14/2022 6:04:06 PM Signed: 9/14/2022 6:04:28 PM
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 9/13/2022 4:22:48 PM Resent: 9/14/2022 6:04:30 PM Viewed: 9/13/2022 4:34:47 PM Signed: 9/15/2022 7:14:35 AM

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	9/13/2022 1:42:10 PM
Certified Delivered	Security Checked	9/13/2022 4:34:47 PM
Signing Complete	Security Checked	9/15/2022 7:14:35 AM
Completed	Security Checked	9/15/2022 7:14:35 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.SPDinfo@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.SPDinfo@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.SPDinfo@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.SPDinfo@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.

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State of New Mexico
General Services Department
State Purchasing Division

Master Agreement Cover Page

Awarded Vendor:
0000168797
Abacus Service Corporation
25925 Telegraph Road, Suite 206
Southfield MI 48033

Email: april@abacusservice.com
Telephone No.: (704) 228-0477

Agreement Number**: 20-00000-21-00021AB**

Payment Terms**: Net 30**

F.O.B.**: Destination**

Delivery**: Per Master Agreement**

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested at Time of Order

Procurement Specialist**: Natalie Martinez** NM

Telephone No.**: (505) 690-5977**

Email: **Natalie.Martinez1@state.nm.us**

Title**: Temporary Employment Services**

Term**: August 15, 2022 – August 14, 2024**

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

Abacus Service Corporation has been awarded the following service categories:

Administrative Support including Office, Clerical and Sales
Industrial/Commercial Workers
Health Clinical
Health Non Clinical

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Master Agreement No. 20-00000-21-00021AB

THIS AGREEMENT for Temporary Employment Services is entered into by and between the **State of New Mexico, General Services Department** (hereinafter the "Lead State" or a "Participating Entity" and **Abacus Service Corporation** (hereinafter the "Contractor").

Contractor Information:
Abacus Service Corporation
April Szlaga, Vice President
25925 Telegraph Road, Suite 206
Southfield MI 48033
april@abacusservice.com
(248) 479-0811

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

Administrative Support (Including Office and Clerical) Occupations in which workers are responsible for day-to-day operations such as internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. May include but is not limited to bookkeepers, messengers, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, office machine and computer operators, legal assistants, cashiers, and toll collectors.

Award means, in the context of this Request for Proposals and all its attendant documents, that point at

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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.

Fully Loaded Labor Rate means the proposed maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

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

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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 temporary 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 by all parties, for three (3) additional renewal periods of one (1) year each.

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:

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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 III. 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

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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 **Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

3.8 **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.

3.9 **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.

3.10 **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**

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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). 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. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, 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 data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

4.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for

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employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (*e.g.*, names, addresses, social security numbers or any other numerical identifier) may be submitted with any report.

4.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter 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 Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

4.3.5 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. The Lead State and 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

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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 & Leasing

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 sixty (60) 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

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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.

5.3 **Leasing or Alternative Financing Methods**. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VI. Ordering

6.1 **Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all 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

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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 shipping address and other delivery requirements, if any;

6.6.3 A billing address;

6.6.4 Purchasing Entity contact information;

6.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

6.6.6 A not-to-exceed total for the products or services being ordered; and

6.6.7 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. Shipping and Delivery

7.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

7.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

7.2 Minimum Shipping. The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

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7.3 **Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

7.4 **Packaging.** 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 IX 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 ascertaining 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.

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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 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

8.5.5 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 X will apply.

9.2 Warranty. Reserved

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 IX.

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,

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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

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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.

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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.

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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

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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 13.2 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.

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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

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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

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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

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Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

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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: April Szlaga Date: 9/13/2022
April Szlaga, Vice President
Abacus Service Corporation

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: 03-136401-00-2

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 Date: 9/13/2022
Taxation and Revenue Department

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

By: Valerie Paulk
Purchasing Agent Date 9/13/2022
State of New Mexico

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

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Temporary Employment Services
Master Agreement 20-00000-21-00021AB
Attachment A:
Scope of Work

Contractor(s) agrees to provide **Temporary Employment Services** relating to Administrative Support (Including Office and Clerical), Commercial/Industrial Workers, and Clinical and Non-Clinical Healthcare Staffing Services, and/or Information Technology Professional Services as defined. Contractor(s) shall be independent contractors and not employees of the State of New Mexico or Participating Entities. Contractor's staff, including temporary assigned individuals shall also not be considered employees of the Participating Entities.

These services are as needed and upon request from Procuring Agencies. Contractor(s) will be responsible for hiring and firing temporary employees, paying all applicable taxes, workers' compensation, benefits, etc., for the candidates who are **not** employees of the individual participating entities. Candidates will not be provided employee benefits from the State agencies or political subdivisions.

The Lead State will not guarantee any minimum level of usage for any resulting contract(s) under this RFP.

1. **Temporary Employment Services**
   A. Contractor will notify the Procuring Agency on availability within four (4) hours after a request is made for services that will commence within five (5) working days following the request;
   B. Contractor will notify the Procuring Agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request;
   C. Contractor will confirm with the Procuring Agency the arrival of its candidate by telephone within one-half (1/2) hour after scheduled arrival time or as determined by the Procuring Agency and the Contractor by mutual agreement.
   D. Contractor is responsible to communicate with its candidate the Procuring Agency's requirements regarding hours of work, duration, location, expectations, dress code and other information concerning the assignment.
   E. All temporarily assigned individuals will be appropriately dressed for the assignment and shall maintain a professional demeanor. Dress code policy is established by the individual agencies. Temporary candidate must dress according to the requirements of the Procuring Agency requesting the assignment.
   F. Temporarily assigned individuals should be available for the entire length of the assignment; however, if a replacement is required, a qualified replacement must be provided within twenty-four (24) hours of notification, including weekends and holidays.
   G. The Procuring Agency reserves the right to reduce the length of the temporary assignment and will provide the Contractor with as much notification as possible.

2. **Work Hours**
   A. The exact work hours for temporarily assigned personnel will be determined by the Procuring Agency. Generally, work hours begin at 8:00 a.m. and end at 5:00 p.m. Monday through Friday excluding officially observed holidays. Any non-working time as the result of early dismissal, due to weather or any other situation as determined by the Procuring Agency are also excluded. Temporarily assigned personnel will work no more than eight (8) hours per day, excluding one (1) hour for lunch; or a total of forty (40) hours per week.

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B. Temporarily assigned individuals will not be paid for their lunch break.
C. Overtime worked is at the discretion of the Procuring Agency and must be approved in advanced and in writing. Overtime will not be authorized or paid unless prior written authorization is obtained from appropriate management staff.
D. Agencies have the right to request temporarily assigned individuals for holiday, evening/night, weekend, or shift work as needed.
E. Hours may vary per Procuring Agency.
F. The Procuring Agency reserves the right to request a replacement of any individual. If for any reason a replacement is required within the first eight (8) hours of service, there will be no charge to the Procuring Agency. If at any time beyond the initial eight (8) hours of service the temporarily assigned individual is determined to be unsatisfactory, the Contractor agrees to issue a credit invoice to the Procuring Agency for the total charges from the point the Procuring Agency notifies the Contractor to request a replacement.
G. The Contractor agrees to replace an unsatisfactory individual within one (1) business day; however, the Procuring Agency has the option to contact a different Contractor for the service.
H. The Procuring Agency shall be the sole judge as to whether a temporarily assigned individual is satisfactory and is fulfilling the Procuring Agency's requirements.

3. **Listing of Position Classifications & Pay Rate**

Each Procuring Agency will provide a listing of position classifications to the Contractor; however, the listing is not meant to be all-inclusive. Individual states or agencies may request other temporary positions by way of providing the Contractor(s) with the employee pay rate, position classification/title and description of duties.

4. **Placement**

A. Agencies may refer a specific individual as a candidate to be recruited by the Contractor to perform specific services needed or may request the Contractor to recruit and provide a specific temporary candidate. The Procuring Agency will not pay a placement or conversion fee for individuals who are a direct referral from the Procuring Agency.
B. Upon a request for service from the Procuring Agency, the Contractor will provide expedient temporary employment services. An e-mail, facsimile, or telephone call from the Procuring Agency will constitute a request for service.
C. The Procuring Agency reserves the right to interview the candidate to determine their qualifications for the required position (this does not negate the Contractor's responsibility of qualifying candidate(s)).
D. The Procuring Agency may reject and/or remove any candidate who does not meet the requested experience or is deficient in the performance of the assignment.
E. Procuring Agencies may select Contractor(s) within their geographic region based on the preference of the Procuring Agency.
F. Multiple Contractors may be contacted to fill the same position.

5. **Contractor's Responsibilities**

A. The Contractor is responsible to obtain the information as described in the Scope of Work and any other information necessary to determine what job category satisfies the service request.
B. Contractor shall supply sufficient, competent, reliable, and properly licensed or certified or both personnel to provide adequate and satisfactory services as required under this Contract. In cases

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where special licenses, accreditations, certifications, or permits are required by State, Federal and/or Local law, statute, or regulation for an employee to perform services of specified job descriptions, Contractor shall provide current copies of such licenses, accreditations, certifications and permits upon Client Agency's request. Contractor shall maintain all applicable licenses, accreditations, certifications and permits during the term of this Contract. Contractor shall immediately notify the Client Agency by written notice in the event any of its employees' licenses, accreditations, certifications, or permits are revoked, expired, or suspended.

C. The Contractor will inform the Procuring Agency point of contact of the proposed job classification and applicable rate to obtain authorization to proceed with the service request.
D. Placing candidates out of applicable job classification is considered a breach of contract. Periodic checks of requests and assignments will be performed by the Procuring Agency to ensure this does not occur.
E. The Contractor is responsible for conducting appropriate background and reference checks on potential candidates prior to any assignments and should be prepared to conduct more extensive background investigations when required by the Procuring Agency. Upon request, Contractor must provide, to the Procuring Agencies, the compliance of the background and reference checks. Failure to provide this information will be considered a violation of the contract and may result in rejection of the candidate and possibly jeopardize future placements by offending Contractor.
F. Contractor will be responsible for liability insurance, federal and state payroll requirements including but not limited to insurance coverage for any candidate sent to the Procuring Agency, payroll taxes, payroll reports, workers' compensation, benefits, hiring and firing etc., for the candidates.
G. The Contractor is responsible for conducting periodic quality assurance checks with the Procuring Agency's point of contact to verify that the Procuring Agency's requirements are being fulfilled by the candidate. At a minimum, these checks should be completed at the end of the first week of any assignment. Procuring Agencies may request quality assurance checks at any interval during the term of the candidate's placement.
H. Candidates may be hired as a permanent employee of the State or Procuring Agency if the Procuring Agencies and hiring processes have been complied with and if the candidate elects to accept employment with the State or Procuring Agency. Such occurrence will create no further obligation (financial or otherwise) on the part of the Procuring Agency.
I. The Procuring Agency will not be responsible for the Contractor's candidate who voluntarily leaves the Contractor's employment or engages in employment with another company.
J. The Contractor agrees to ensure candidates agree to be bound by the Participating State's security regulations, policies, and standards as required by the Procuring Agency (e.g., Department of Corrections). This will vary based on the individual Procuring Agency's requirements.
K. Contractor shall ensure adequate backup documentation (such as candidate timesheets) are attached to invoice or billing requests. The timesheet should include the following:
    a. Name of the Procuring Agency;
    b. Name of the temporarily assigned individual;
    c. Dates worked;
    d. Beginning and ending time;
    e. Number of actual regular hours worked each day; and
    f. If applicable, number of overtime hours worked each day
    g. Written pre-approval of overtime hours.
    h. Time sheet signed by authorized representative of the Procuring Agency.

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L. The Contractor is responsible and may be held financially liable for the negligent acts of its candidates.

6. **Bonding**
   A. The Contractor shall have the ability to bond candidates as directed by the Procuring Agency.
   B. The fee for this service will be borne by the Procuring Agency.

   Selection of the bonding insurer is at the Contractor's discretion; however, each insurance policy shall be:

   Issued by insurance companies authorized to do business in the Participating State or eligible surplus lines insurers acceptable to and having agents in the State upon whom service of process may be made.

7. **Travel**
   A. Reimbursement for travel will be at the discretion of the Procuring agency and shall not be subject to the Contractor's markup.
   B. In the event a candidate's duties require travel, the reimbursable travel costs shall follow the Procuring Agencies travel reimbursement policies. Travel authorizations must be given before travel occurs per Procuring Agency's internal policies.
   C. Travel expenses submitted for reimbursement must follow Procuring Agency's internal policies.
   D. Valid travel reimbursements will be reimbursed at the Procuring Agencies current travel rate.
   E. The candidate and the Procuring Agency's contact person must sign the travel expense form.
   F. The form must be submitted with the Contractor's invoice for services with the travel expense as a separate line item on the invoice in order to be reimbursed by the Procuring Agency.
   G. The type of position requiring travel will vary based on the individual Procuring Agency's requirements.

8. **Equipment, Property and Damages**
   A. The Contractor shall be responsible for the proper maintenance and custody of any personal tangible property owned and real property furnished by the Procuring Agency for the use in connection with the performance of the contract.
   B. The Contractor will reimburse the Procuring Agency for such property's loss or damage caused by the Contractor' assigned individual, with the exception of normal wear and tear.
   C. The equipment used may include computers, copy machines, phones, printers, etc. Equipment may vary depending on the candidate assignments.

9. **Procuring Agency's Responsibilities**
   A. Prior to contacting the Contractor (s), the Procuring Agency is responsible to define details of the request to include, but not be limited to:
      a. Number of individuals needed;
      b. Job duties;
      c. Equipment to be used;
      d. Knowledge, skills and education and/or experience;
      e. Computer software to be used;
      f. Hours of work;
      g. Expected length of assignment;
      h. Job related attire;
      i. Position location;
      j. Procuring Agency contact person; and

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k. Other pertinent job-related information

B. Depending on the amount of detail required, it is recommended the Procuring Agency submit this information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment.

10. **Background checks**

A. The Procuring Agency is responsible for requesting additional background investigations beyond normal references prior to the temporary assignment

B. Should an additional background check be required due to the nature of the assignment, the Procuring Agency may be responsible for the cost of the additional checks

C. It is reasonable to expect employment eligibility and references will be required for all candidates; background checks for referrals by the Procuring Agency will be at the discretion of the Procuring Agency.

D. Standard checks which would include employment eligibility and reference checks shall be at the cost of the Contractor (s).

E. Other background checks will be at the discretion of each requesting Procuring Agency.

F. Procuring Agencies reserve the right to request and conduct pre-employment background checks and drug testing prior to the potential candidates starting date. Procuring Agencies also reserve the right to require other tests as negotiated in their Participating Addendum.

G. Procuring Agencies will limit their background checks, drug testing, and other testing requirements to the same as required of their own permanent full-time employees holding the same or similar positions to be filled by the candidate.

CATEGORY AWARDED	Contractor's Administrative Service Fee
1. Administrative Support (Including Office and Clerical)	28%
2. Commercial/Industrial Workers	32%
3. Healthcare Staffing Services **a.** Clinical **b.** Non-Clinical	 **a.** 30% **b.** 29%

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Certificate Of Completion

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Subject: 20-00000-21-00021AB Abacus TES Master Agreement
Source Envelope:
Document Pages: 28
Signatures: 3
Envelope Originator:
Certificate Pages: 5
Initials: 1
Natalie Martinez
AutoNav: Enabled
13 Bataan Blvd
EnvelopeId Stamping: Enabled
Santa Fe, NM 87508
Time Zone: (UTC-07:00) Mountain Time (US & Canada)
Natalie.Martinez1@state.nm.us
IP Address: 164.64.62.10

Record Tracking

Status: Original
9/12/2022 11:09:36 AM
Holder: Natalie Martinez
Natalie.Martinez1@state.nm.us
Location: DocuSign
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
April Szlaga April@Abacusservice.com Vice President Security Level: Email, Account Authentication (None)	April Szlaga Signature Adoption: Pre-selected Style Using IP Address: 107.5.165.126	Sent: 9/12/2022 11:46:09 AM Viewed: 9/13/2022 6:51:35 AM Signed: 9/13/2022 6:55:07 AM
Electronic Record and Signature Disclosure: Accepted: 9/13/2022 6:51:35 AM ID: 58a97b39-29b2-42fa-bd21-77919afaede7		
Natalie Martinez natalie.martinez1@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	NM Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 9/12/2022 11:46:08 AM Viewed: 9/12/2022 11:46:19 AM Signed: 9/12/2022 11:46:23 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Ann Marie Lucero AnnMarie.Lucero@state.nm.us Tax Examiner Supervisor State of New Mexico, Dept of Information Technology Signing Group: 33300 - CRS Verification Security Level: Email, Account Authentication (None)	Ann Marie Lucero Signature Adoption: Pre-selected Style Using IP Address: 164.64.133.193	Sent: 9/12/2022 11:46:09 AM Resent: 9/13/2022 6:55:09 AM Viewed: 9/13/2022 9:52:06 AM Signed: 9/13/2022 9:54:35 AM
Electronic Record and Signature Disclosure: Accepted: 6/2/2020 2:28:54 PM ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910		
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	Valerie Paulk Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 9/12/2022 11:46:10 AM Resent: 9/13/2022 9:54:38 AM Viewed: 9/12/2022 3:58:24 PM Signed: 9/13/2022 10:05:47 AM
Electronic Record and Signature Disclosure:		

Signer Events	Signature	Timestamp
Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		

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	9/12/2022 11:46:10 AM
Certified Delivered	Security Checked	9/12/2022 3:58:24 PM
Signing Complete	Security Checked	9/13/2022 10:05:47 AM
Completed	Security Checked	9/13/2022 10:05:47 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.SPDinfo@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.SPDinfo@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.SPDinfo@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.SPDinfo@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.