

Master Agreement #: AR2492

Contractor: **UNISYS CORPORATION**

Participating Entity: **STATE OF WISCONSIN**

The following products or services are included in this contract portfolio:

- All products, services and accessories listed on the Contractor page of the NASPO ValuePoint website including the Cloud Management Platform.

### **Master Agreement Terms and Conditions:**

1. Scope: This addendum between Contractor and Participating State/ Entity (the "Parties") modifies and amends the **Cloud Solutions** Contract number AR2492 lead by the State of Utah and referred to in this Participating Addendum as the "Master Contract" for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the Bureau Director, State Bureau Procurement. Issues of interpretation and eligibility for participation are solely within the authority of the Bureau Director, State Bureau Procurement.

2. Participation:

INDIVIDUAL CUSTOMER: The State of Wisconsin, Department of Administration, Division of Enterprise Technology ("DET") is authorized to allow use of the Master Agreement as amended by this Participating Addendum (collectively, this "Agreement") and all services covered by the scope of the Master Agreement. **Participating Entities must contact DET directly to request use of this Agreement: Dave Meyer; [davidj.meyer@wisconsin.gov](mailto:davidj.meyer@wisconsin.gov), 608-261-6628.** The University of Wisconsin System campuses and Wisconsin municipalities will be defined as "Participating Entities" allowed to use this Agreement. All services covered by the scope of the Master Agreement available from the Contractor and its Providers are authorized for procurement within this Agreement, including but not limited to application hosting, storage, infrastructure as a service, platform as a service and software as a service.

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

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3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.

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

Contractor

|            |                                                                    |
|------------|--------------------------------------------------------------------|
| Name:      | Peter Cipriano                                                     |
| Address:   | Unisys Corporation, 801 Lakeview Dr., Ste 100, Blue Bell, PA 19422 |
| Telephone: | 845-518-2172                                                       |
| Fax:       |                                                                    |
| Email:     | peter.cipriano@unisys.com                                          |

Participating Entity

|            |                                                                |
|------------|----------------------------------------------------------------|
| Name:      | Ceotrid Gilbert                                                |
| Address:   | 101 E. Wilson Street, 6 <sup>th</sup> Floor, Madison, WI 53703 |
| Telephone: | 608-267-4506                                                   |
| Fax:       |                                                                |
| Email:     | Ceotrid.Gilbert@Wisconsin.gov                                  |

**5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

[X] The following changes are modifying or supplementing the Master Agreement terms and conditions.

**5.1 DEFINED TERMS**

For purposes of this Agreement, the following terms shall have the meanings defined below. Any other capitalized terms in this Participating Addendum not otherwise defined in this Participating Addendum shall have the meanings as the defined terms provided in the Master Agreement.

"Contractor Services" mean consulting, design and/or development services that may be provided directly by Contractor or its subcontractors under this Agreement including Contract Consulting and Design Services available under the Master Agreement but excluding any GIS Cloud Hosting Services, General Cloud Hosting Services or Cloud Provisioning Services,

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including Unisys Cloud Provisioning System SaaS (collectively referred to as "Cloud Services" or "Cloud Hosting Services") supplied by the applicable supplier/owner/provider of such services ("Cloud Hosting Providers" or "Cloud Services Providers").

"Deliverables" mean the tangible work product originally created in the performance of the Contractor Services and required to be delivered pursuant to mutually agreed Statements of Work.

"Subcontractor(s)" means Contractor's subcontractors used in the delivery of Contractor Services and excludes Cloud Hosting Providers.

"State Information" means data, technical information, and materials that, originate with the State, or are developed, or prepared, or provided by the State or which Contractor obtains or gathers from the State in the performance of this Agreement, including, but not limited to, reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion or format. State Information also includes those Deliverables owned by the State pursuant to Section 3.6(b) and (c).

5.2 Usage Reports. Contractor shall submit a quarterly State of Wisconsin gross sales report to the Participating State contact person listed in Section 4, above (or as amended), in accordance with the following schedule:

| <u>Quarter Ending</u> | <u>Report Due</u> |
|-----------------------|-------------------|
| March 31              | April 30          |
| June 30               | July 31           |
| September 30          | October 31        |
| December 31           | January 31        |

The State shall provide a format for the quarterly report to be used for this function. The quarterly report shall be subtotaled by each Participating Entity. The quarterly report shall also include any adjustments from prior periods. However, the Contractor agrees to provide additional reports if requested to the State of Wisconsin in a format and frequency as mutually agreed by both parties.

5.3 The validity of this Agreement, any of its terms or provisions, as well as the rights and duties of the Parties to this Participating Addendum, shall be governed by the laws of the State of Wisconsin. Any action at law or in equity to enforce or interpret the provisions of this Participating Addendum shall be brought in a court of competent jurisdiction in Wisconsin.

**5.4 CONTRACTOR'S REPRESENTATION**

Contractor warrants that qualified personnel shall provide Contractor Services in a workmanlike manner. Contractor shall not enter any agreement with a third party that it knows might abridge any rights of the State under this Agreement. Contractor shall serve as the prime contractor under this Agreement for the Contractor Services. Should Contractor engage any Subcontractor(s) to deliver Contractor Services pursuant to an SOW under this Agreement, the Contractor shall be legally responsible for the performance and payment of the Subcontractor(s). Subject to any applicable terms of use, Trade Rules and Practices applicable

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to the Cloud Hosting Services and any software provided under a SOW, the Participating Entity is not agreeing to and is not responsible for any terms and conditions with third parties. Names of any third-party Subcontractors of Contractor may appear for purposes of convenience in this Agreement and shall not limit Contractor's obligations hereunder. Contractor shall retain responsibility for functional and technical expertise as needed in order to incorporate any work by third party Subcontractor(s) in the delivery of Contractor Services.

- a. Intellectual Property. Contractor represents to the best of its knowledge that it has the right to provide the Contractor Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party and that Contractor Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b. Inherent Services. Unless otherwise expressly provided in this Agreement, Contractor shall furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Contractor to provide and deliver the Contractor Services and Deliverables.
- c. Contractor represents, as of the date of this Participating Addendum, that it has the financial capacity to perform and to continue perform its obligations under this Agreement; that Contractor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Contractor that will materially adversely affect performance of this Agreement; and that entering into this Agreement is not prohibited by any contract, or order by any court of competent jurisdiction.

**5.5 PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION**

- a. Contractor and/or its third-party Subcontractors has or have created, acquired or otherwise has or have rights in, and may, in connection with the performance of Contractor Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). Contractor Technology is and remains the property of Contractor and its licensors. To the extent that any Contractor Technology is contained in any of the Deliverables including any derivative works, and upon payment by the State to Contractor for any such accepted Deliverable, the Contractor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use, access and benefit from use of such Contractor Technology solely as part of and in connection with the State's use of such accepted Deliverables for the State's use.
- b. Contractor shall not acquire any right, title and interest in or to the copyrights for any goods provided by the State or any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products

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provided by the State to Contractor (the "State's Information"). The State hereby grants Contractor a royalty-free, fully paid, worldwide license to use the State's Information provided to the Contractor for delivery of Services to the State.

- c. The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a third- party claim that the Contractor Services or Deliverables supplied by the Contractor, or the operation of such Deliverables pursuant to a current version of Contractor-supplied technology or documentation, infringes a patent, or copyright or violates a trade secret in the United States. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following: i) That the Contractor shall be notified within ten (10) business days in writing by the State of any such claim; and, ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense. To the extent available from the applicable Cloud Hosting Provider for pass through to the State, Contractor will pass through to the State any infringement indemnities provided by the Cloud Hosting Provider for the Cloud Services.
- d. Should any, Deliverable, Contractor Services or software supplied by Contractor, or the operation thereof become, or in the Contractor's opinion are likely to become, the subject of a third party claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverable or Contractor Services or software, or to replace or modify the same to become non-infringing and continue to meet procurement specifications as stated in this Agreement and in any SOW, in all material respects, provided that if neither of these options can reasonably be taken, or if the use of such Deliverable or Contractor Services by the State shall be prevented by legal action, the Contractor shall take back such Deliverable and/or software and cease performing the infringing Services, and refund any sums the State has pre-paid Contractor therefor, less any reasonable amount for use of or damage to any such returned Deliverables, software or discontinued Contractor Services , and make commercially reasonable efforts to assist the State in procuring substitutes for such Deliverables and Contractor Services or software. Contractor shall not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Contractor Deliverable, Service or software, (ii) results from the State's supplied information or materials or (iii) results from the continued use of the same after receiving notice they infringe a trade secret of a third party.

**5.6 IP RIGHTS**

- a. Proprietary materials licensed to the State in the delivery of Contractor Services shall be identified to the State prior to use or provision of Contractor Services hereunder and shall remain the property of the Contractor. Software or firmware embedded in a Deliverable

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shall not be a severable Deliverable unless specifically indicated in an SOW. All Software source and object code is the property of Contractor or Contractors Subcontractors and is only licensed to the State on a nonexclusive basis as provided in the applicable Statement of Work, in consideration for the license fee paid by the State, pursuant to the terms of the respective governing software license.

- b. Deliverables created specifically for the State pursuant to this Agreement shall be the property of the State and ownership of each Deliverable shall automatically transfer to the State upon acceptance and payment for such Deliverable. State owned-Deliverables shall not include Contractor Technology; however, upon acceptance of and payment for the Deliverables, Contractor grants the State a royalty-free, fully paid-up, worldwide, non-exclusive license to use, access and benefit from, without the right to sublicense, Contractor Technology incorporated in the Deliverables as provided in Section 3.6(a); provided, however, the State may sublicense such Contractor Technology (as part of the Deliverables) to its own agents and Subcontractors solely to permit them to meet their obligations to use the same in support of the State and subject all the same restrictions as are applicable to the State. The State shall not acquire rights to any Contractor Technology, processes, or software used by Contractor in performing the Services (except for the license to Contractor Technology as described above). Contractor may retain a copy of each Deliverable for archival purposes.
- c. All State Information and any modifications made by Contractor to the State's Information in the performance of the Contractor Services shall be and remain the property of the State of Wisconsin.
- d. Reciprocal License Grant. No rights granted herein, nor in the underlying documents, shall restrict Contractor's use, sale, license, or modification of Contractor Technology and Deliverables in other jurisdictions. To the extent necessary or proper to effect this paragraph, the State grants an unrestricted, perpetual, royalty-free, irrevocable, world-wide, non-exclusive license to Contractor for all State owned Deliverables; provided, however, that such license is expressly conditioned upon the following: i) the State shall not have, nor suffer, any liability arising from Contractor's use, sale, license or other dissemination of the licensed materials; ii) Contractor shall not represent, advertise or otherwise associate the licensed materials with the State; iii) Contractor shall not enter into agreements in derogation of the rights of the State; and iv) said license grant by the State to Contractor shall not supersede any restrictions or limitations stated under the terms of this Agreement.
- e. Contractor shall not acquire any right, title and interest in and to the copyrights for State Information provided by the State to Contractor except to use such State Information as necessary for it to provide Services to the State according to this Agreement.
- f. For the avoidance of doubt, Contractor owns all Contractor Technology, and any modifications or enhancements thereto and derivative works based thereon, whether

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developed or created prior to or during the performance of Services under the awarded Agreement.

**5.7 REPRESENTATIONS**

By submitting a Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner so that the Deliverables will, as delivered meet the specifications stated or referred to in this Agreement or SOW. The parties acknowledge and agree that the State's Acceptance of a Deliverable indicates only that the State has reviewed the Deliverable and detected no material deviations from the agreed specifications ("Deficiencies") at that time and that the State's Acceptance of a Deliverable does not discharge any of the Contractor's obligations under this Agreement for the provision of Contractor Services and Deliverables per the specifications of a SOW.

**5.7.1 INTERPRETATION OF DELIVERABLES**

In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Agreement as applicable to such Deliverable, including without limitation a Deliverable that has already received Acceptance, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest State-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No mutually agreed requirements for the Deliverables shall be omitted from the provided Deliverables without the written consent of the State's contract administrator.

**5.7.2 DELIVERABLE ACCEPTANCE PROCESS – IN GENERAL**

The Deliverable Acceptance Process shall be as set forth in any Statement of Work. If no acceptance process is specified, Deliverables will be deemed accepted (a) 10 days following delivery if no written Deficiencies have been identified in writing to Unisys; or (b) the Participating Entity uses the Deliverable for any reason other than to perform acceptance testing/review during such 10-day period.

**5.8 CONTRACTOR PERSONNEL**

The State may request the Contractor to remove or reassign Contractor personnel assigned to perform Contractor Services ("Contractor Personnel") at the State's discretion for any lawful reason or if the performance or conduct of such personnel is unsatisfactory. The State may request that such Contractor Personnel be replaced within fifteen (15) business days from such removal. The State's contract administrator shall notify the Contractor in writing and the exclusion of a designated individual(s) shall take effect as soon as reasonably practicable provided that the parties shall first discuss alternatives to removal as may be requested by Contractor in writing, however the State reserves the right to deny entry or to request the immediate removal of any Contractor Personnel for any lawful reason from any of its facilities based on security or safety concerns. The decision of the contract administrator following such

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discussions if any shall be final. This provision shall not infringe upon the right of the Contractor to employ the removed individual, nor shall the State's rights under this provision implicate the State as a party to any of the Contractor's obligations in the Agreement.

The State shall have the right, at no charge to the State, to interview, check the references of, and accept or reject any proposed replacements for Contractor Personnel who will be performing Contractor Services on-site at the State's facilities prior to such Contractor Personnel replacements beginning work on the project. To the extent that departing Contractor Personnel provide adequate notice to the Contractor, Contractor shall use commercially reasonable efforts to obtain a smooth transition at no additional charge to the State, including the provision of knowledge transfer documentation and cooperation between the replaced and the newly assigned personnel including an overlap in the assignment of the replaced and newly assigned personnel for a duration of at least ten (10) business days, unless the State's contract administrator agrees to a shorter period in writing.

**5.9 WARRANTY OF THIRD PARTY PRODUCTS**

The Parties agree that, because the Contractor is not the manufacturer or developer of third-party vendors' products or services, any third-party vendors' products and services provided hereunder are not warranted by Contractor and any warranties shall solely under the terms and conditions of the third-party licenses or other agreements extended directly to the State by the third-party vendor and by which such products are governed. Contractor shall pass through to the State any warranty and indemnification rights available for pass through to the State from the manufacturers or vendors of such products and services comprising the Deliverables. Such third-party warranty coverage shall not relieve the Contractor from Contractor's warranty obligations for Contractor's Services as provided herein.

**5.10 PAYMENT TERMS AND INVOICING**

Pricing shall be set forth in the individual Statements of Work. Payments terms are as follows, unless otherwise agreed to a Statement of Work:

- a. All invoices shall include Contractor's tax identification number and a detailed description of Services rendered. If the State fails to pay a properly submitted invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to s. 16.528 (3)(e), Wis. Stats., it shall pay any undisputed portion of said invoice, and will be excused from the prompt payment requirement for the disputed portion pending resolution of the dispute, provided it gives timely notice of such dispute to Contractor in writing and escalates the matter through the dispute resolution process in section 5.30 of this Agreement.
- b. All purchase orders issued by Participating Entities under this Participating Addendum shall include the Participating State contract number: SPO Price List Contract No. 505ENT-O14-CLOUDSERVS-01 and the Lead State, State of Utah-State Cooperative Contract Number

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AR2492. Participating Entities may use a PCard, subject to its credit limit, or issue a purchase order, provided that any additional or different terms of such PCard or purchase order shall not apply.

- c. Contractor shall forward invoice(s), directly to the ordering agency. Purchase Orders and Payments shall be made to Unisys Corporation.
- d. The form of "engagement" and required information on the invoice related to services provided under the State of Utah-State Cooperative Contract have been determined by WSCA and agreed to by the Contractor. The Participating Entity and Contractor will mutually agree to engagement addenda and statements of work.

5.11 Taxes: Contractor's charges are, except as expressly provided in a SOW, exclusive of any applicable taxes that are the State's responsibility to pay. The State of Wisconsin represents it and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials. Unisys will invoice and the State will pay any tax which is, according to the governing tax authority, is the State's responsibility to pay, exclusive of taxes based on the gross or net income of Unisys.

5.12 Pricing and Discount:

Contractor's stated prices approved and agreed to with WSCA/ NASPO under the Master Price Agreement shall apply to this Participating Addendum and its SOWs unless otherwise mutually agreed for a specific SOW. The State of Wisconsin qualifies for governmental discounts, if available; and its educational institutions also qualify for educational discounts, if available. The Contractor may offer, within written quotes, a greater discount than the approved minimum discount for the State of Wisconsin, volume purchases or for competitive reasons.

Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency sixty (60) calendar days before the proposed effective date of the price increase. Prices applicable under a particular SOW shall be subject to any price increase restrictions and notice requirements agreed upon in the SOW.

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5.13 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within thirty days, from Contractor's receipt of such notice may, at the State's option, be the basis for terminating the Agreement for the State's convenience per the terms of this Agreement or other rights and remedies available by law.

5.14 Right of Offset. Upon written notice, the State may offset against contractual payments due to the Contractor in an amount necessary to satisfy a certified or verifiable delinquent payment owed by the Contractor to the State of Wisconsin or any local unit of government in Wisconsin that is not under formal written appeal. The State also reserves the right to cancel this Agreement as provided in Section 3.17.2, Termination, if a delinquency is not satisfied by the offset or other means during the Agreement Term.

5.15 Contractor Compliance and Responsibility for Actions

The Contractor shall at all times comply with and observe all Federal, State, and local laws, ordinances, and regulations that are in effect during the term of this Agreement that govern Contractor's business and operations.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

5.16.1 Renegotiation of Agreement

Each party shall have the right to request the other renegotiate the terms and conditions of this Agreement to the extent required to accommodate a change in governing law or policy that, in the sole discretion of the requesting party, either substantially and unreasonably changes the its duties hereunder, or renders performance, enforcement or compliance with the totality of the Agreement impossible, patently unreasonable, or unnecessary.

5.17 Term and Termination

5.17.1 This Agreement shall end conterminously with the Master Agreement, provided that any Statements of Work entered into prior to expiration or termination of this Agreement shall survive such expiration of the Master Agreement, for the term stated in the Statement of Work, and continue to be subject to its terms.

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**5.17.2 Termination for Cause**

a. The State may terminate this Participating Addendum with written notice if, after providing the Contractor with thirty (30) days written notice of the Contractor's right to cure a material failure of the Contractor to perform under the terms of this Agreement, the Contractor fails to cure such material failure within the thirty (30) day cure period.

The Contractor may terminate this Agreement if, after providing the State with thirty (30) days written notice of the State's right to cure a material failure of the State to perform under the terms of this Agreement, the State fails to cure such material failure within the thirty (30) day cure period.

Any termination for cause must be preceded by written notice and an opportunity to cure as provided in this section. Unless otherwise stated in the notice of termination, termination of this Agreement shall not terminate any SOW's in progress. Upon the termination of this Agreement for any reason, or upon Agreement expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration (including any surviving SOWs).

b. Upon termination under this section, all Deliverables prepared by the Contractor under a Contractor Services and Statement of Work and paid for by the State that are intended to be the property of the State under the terms of this Agreement shall become the property of and be delivered to the State. The time period the State will have from the date of termination of any Cloud Services to remove all its data from the cloud shall be addressed in the applicable SOW based on the Cloud Hosting Provider's Trade Rules and Practices.

c. The State may, upon termination of this Agreement for cause, procure on terms and in the manner that it deems appropriate, materials or services to replace those terminated for cause under this Agreement.

**5.17.3 Termination for Convenience**

The State reserves the right to terminate the Agreement without cause in whole or in part upon sixty (60) days advance written notice to Contractor, when in the best interests of the State and without penalty or recourse, provided that the State may only terminate in part if the remaining elements are not dependent upon the terminated elements and provided further that any existing Statements of Work entered into prior to such termination shall not be affected by termination of this Agreement under this section and shall survive for the term of the Statement of Work unless the Statement of Work is separately terminated according to this Agreement and the applicable Statement of Work. For any Statements of Work that are terminated by the State according to this Agreement or the applicable Statement of Work, upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and use commercially reasonable efforts to minimize all further costs to the State. The Contractor may terminate this Agreement at any time, without

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cause, in whole or in part by providing a written notice to the State at least one hundred and eighty (180) days in advance of the intended date of termination provided that the Contractor may only terminate in part if the remaining elements are not dependent upon the terminated elements and provided further that any existing fully executed Statements of Work entered into prior to such termination shall not be affected by termination of this Agreement under this section and shall survive for the term of the Statement of Work unless the Statement of Work is separately terminated according to this Agreement and the applicable Statement of Work. In the event either party exercises its right to terminate this Agreement for Convenience pursuant to this Section of the Agreement, the Contractor shall be entitled to payment for the Services completed as of the date of termination or cancellation, such payment will be due according to the payment terms as set forth in the individual statement of work, or, if silent, the Master WSCA Contract. The State shall be entitled to receive all Deliverables in progress or completed under the terminated Statements of Work as of the date of termination or cancellation. The State shall have no other liability arising out of termination or cancellation exercised according to this Agreement.

**5.18 No Quantity Guarantees**

Purchase under this Agreement pursuant to the State of Utah-State Cooperative Contract is not mandatory. This Participating Addendum is non-exclusive.

The State of Wisconsin may obtain related goods or services from other sources during the term of this Agreement in its sole discretion and at its sole option. Subject to the foregoing, the State of Wisconsin makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Services shall be procured through this Agreement.

**5.19 Independent Contractor**

The Contractor shall act as an independent contractor in performing all Services under this Agreement and, except as otherwise outlined herein, as between the State and Contractor, shall maintain complete control over its employees, Contractor Personnel, and Subcontractors, if any.

**5.20 State and Federal Law, Regulation and Policy as Applied to Deliverables**

Contractor Services and Deliverables shall comply with the acceptance criteria defined by the parties and incorporated into an applicable SOW. In the course of defining such criteria, the parties shall cooperate to identify and address applicable laws, in consultation with the State's advisors. The Contractor will work with the State and its advisors to implement all appropriate agreed-upon changes in business processes or as applicable to the Contractor Services and Deliverables as required by State and Federal law, regulations or policy as agreed by the parties through the change control procedures specified in the Statement of Work. In the event a change in or the State's interpretation of an applicable law, regulation or policy requires a modification or addition to the scope of Services described herein or by an SOW under this

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Agreement, the parties shall utilize the change control procedures set forth in this agreement to facilitate the implementation of such changes to the scope of Services. Additional compensation shall be as mutually agreed to by the parties.

**5.21 Cooperation with Other Contractors**

In the event that the State enters into a contract with another contractor for the provision of additional services that interact with or relate to the Contractor Services, the Contractor shall require that its Contractor Personnel use commercially reasonable efforts to cooperate with such other contractor so as not to disrupt the performance of their services. Contractor Personnel shall cooperate on a commercially reasonable basis with State personnel, hardware manufacture representatives, system software Contractors, and communications systems Contractors in the provision of Contractor Services to the State.

**5.22 Confidential, Proprietary and Personally Identifiable Information**

Any additional or different terms applicable to Confidential Information or personally identifiable information from those set out in the Master Agreement may be addressed as mutually agreed and applicable to the work in the governing Statement of Work.

**5.23 Liquidated Damages**

Liquidated Damages for failures or delays in the performance of the Contractor Services may be addressed as mutually agreed and applicable to the Contractor Services in the governing Statement of Work.

**5.24 Non-Exclusive**

Except for remedies designated herein as exclusive or which are exclusive as a matter of law, no remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one (1) or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

**5.25 Insurance Responsibility**

The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees engaged in the Contractor Services performed under this Contract;

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- Commercial liability, bodily injury and property damage insurance against claim(s) that may occur in carrying out the Contractor Services pursuant to this Contract, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and
- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the Contractor Services pursuant to this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Agency before the Contractor Services may commence. (if applicable)

The State reserves the right to require higher or lower insurance limits, where warranted, provided any higher required limits shall not apply to existing Statements of Work unless otherwise agreed in writing and Contractor may terminate this Agreement (but not existing SOWs) for its convenience (upon the 180 days' notice as required in 5.17.3) if it does not agree to comply with the higher limits.

**5.26 Recordkeeping and Record Retention**

§19.36 (3) of the Wisconsin Statutes applies to this Agreement, and Records (as defined in §19.32 of the Wisconsin Statutes) that are produced or collected under this Agreement are subject to disclosure pursuant to a public records request.

The Contractor shall establish and maintain adequate records of all documentation developed or compiled by it for the State and expenditures incurred by it under this Agreement. All such records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP) in accordance with federal, State and local laws or ordinances applicable to Contractor. The Contractor, following final payment, shall retain all its records produced or collected under this Agreement for three (3) years.

Any additional responsibilities relative to Contractor's retention of records may be addressed as mutually agreed in the applicable Statement of Work for Contractor Services.

**5.27 Promotional Advertising and News Releases**

Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made by Contractor without prior written approval of the State.

**5.28 Anti-Trust Assignment**

By entering into this Agreement, Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the State relating specifically to

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that proportionate amount of the Goods or Services attributable to the Goods or Services purchased or acquired by the State from the Contractor under this Agreement.

**5.29 Assignment of Agreement**

The Contractor shall provide prior written notice to the State before assigning the rights and obligations of this Agreement to another party. The State reserves the right to withhold approval of any such assignment in its sole discretion. The terms and conditions of this Agreement as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties. Notwithstanding the above, Contractor may utilize Subcontractors and Cloud Hosting Providers as provided in the Agreement.

**5.30 Agreement Dispute Resolution**

In the event of any dispute or disagreement between the parties under this Agreement, whether with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party hereto, except for breach of Contractor's intellectual property rights, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. Except as may be necessary to avoid expiration of the applicable statute of limitations, No legal action of any kind between the parties, except for the seeking of equitable relief in the case of the public's health, safety or welfare or protection of Contractor's or its licensors, Subcontractor's or the Cloud Hosting Provider's intellectual property rights intellectual property rights, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the State, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

**5.31 Miscellaneous Terms:**

a. **NOTIFICATION:** Contractor shall use reasonable efforts to notify the Division of Enterprise Technology per Section (2) herein, of any expansions to existing cloud operations under this Agreement that it becomes aware of that are being pursued by any Wisconsin agency or public procurement unit.

b. **APPLICABLE LAW AND COMPLIANCE:** This Agreement shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Agreement and which govern Contractor's business. The State of Wisconsin reserves the right to cancel this Agreement if the contractor fails to cure any failure to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to terminate this

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Agreement with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

c. **DISCLOSURE:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which Contractor knows a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this Agreement is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the Agreement. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

d. Contractor certifies to the best of its knowledge and belief, no relationship exists between it and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.

e. **DUAL EMPLOYMENT:** Contractor shall abide by any requirements applicable to Contract in Section 16.417, Wis. Stats.

f. **EMPLOYMENT:** The contractor will not engage the services of any person or persons it knows is now employed by the State of Wisconsin, including any department, commission or board thereof, to provide Contractor Services relating to this Agreement without the written consent of the employing agency of such person or persons and of the contracting agency.

g. **CONFLICT OF INTEREST:** Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.

h. **INDEPENDENT CAPACITY OF CONTRACTOR:** The parties hereto agree that the Contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state

i. **Acceptance:** Acceptance criteria for Contractor Services will be provided for in the Statement of Work.

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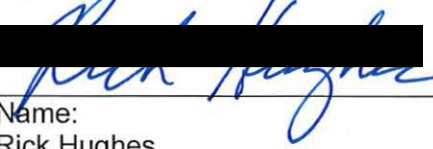
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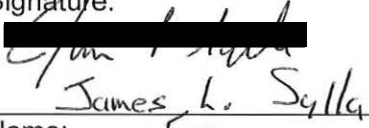
- j. **TESTING:** If applicable, testing criteria will be provided for in the Statement of Work.
- 6 **Subcontractors:** All contactors, dealers, and resellers authorized by the State of Wisconsin, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
- 7 **Orders:** Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
- 8 **Purchase Order Instructions:** The form of "engagement" and required information on the invoice related to services provided under the Master Agreement have been determined by NASPO and agreed to by Contractor. Any additional information requirements should be detailed in Section 5 (above).
- 9 **Entire Agreement:** This Participating Addendum and Master Agreement #AR2492 (administered by the State of Utah) together with all exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with all exhibits, shall not be added to or incorporated into this Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected unless agreed to in writing between the Contractor and the Participating State/Entity.
- 10 **Order of Precedence:** In the event of any inconsistency between the documents in or pursuant to this Agreement, the inconsistency shall be resolved in the following order of precedence:
- 1) Applicable Federal and State of Wisconsin statutes, laws and regulations;
  - 2) A Statement of Work (SOW) executed under the Engagement Addendum;
  - 3) The Engagement Addendum;
  - 4) The Participating Addendum;
  - 5) The terms and condition of Master Agreement #AR2492

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**  
**CLOUD SOLUTIONS 2016-2026**  
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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

|                                                                                                 |                                                                                                  |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Participating Entity:                                                                           | Contractor:                                                                                      |
| Signature:<br> | Signature:<br> |
| Name:<br>Rick Hughes                                                                            | Name:<br>David A. Lechner                                                                        |
| Title: Director, State Bureau of Procurement                                                    | Title: Vice President Public Sector, US and Canada                                               |
| Date:<br>7.27.17                                                                                | Date:                                                                                            |

|                                                                                                   |
|---------------------------------------------------------------------------------------------------|
| Participating Entity:                                                                             |
| Signature:<br> |
| Name:<br>David Cagigal <sup>For</sup>                                                             |
| Title: Bureau Director,<br><del>CIO</del> , Division of Enterprise Technology                     |
| Date:<br>7/28/17                                                                                  |

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**

**CLOUD SOLUTIONS 2016-2026**

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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

|                                      |                                                                            |
|--------------------------------------|----------------------------------------------------------------------------|
| Cooperative Development Coordinator: | Shannon Berry                                                              |
| Telephone:                           | 775-720-3404                                                               |
| Email:                               | <a href="mailto:sberry@naspovaluepoint.org">sberry@naspovaluepoint.org</a> |

*Please email fully executed PDF copy of this document  
to  
[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)  
to support documentation of participation and posting  
in appropriate data bases.*