

PARTICIPATING ADDENDUM



CITIZEN ENGAGEMENT PLATFORMS

Led by the **State of Utah**

Master Agreement #: AR3764

Contractor: **TYLER TECHNOLOGIES, INC.**

Participating Entity: **STATE OF IDAHO**

Scope and Participation:

1. Scope:

- ☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement.
- ☐ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement, 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: All state of Idaho agencies and public agencies (as defined by Idaho Code, Section 67-2327) (both referred to as "Purchasing Entities" within this PA) are authorized to purchase products and services under the terms and conditions of the NASPO ValuePoint Master Agreement and those within this PA. Public agencies include any city or political subdivision of the state of Idaho, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities, or any political subdivision created under the laws of the state of Idaho; and public schools and institutions of higher education. It will be the responsibility of the public agency to independently contract (i.e., issue purchase orders) with the Contractor and/or comply with any other applicable provisions of Idaho Code governing public contracts. Issues of interpretation and eligibility for participation are solely within the authority of the Administrator of state of Idaho Division of Purchasing, within the Department of Administration.

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:

PARTICIPATING ADDENDUM**CITIZEN ENGAGEMENT PLATFORMS**Led by the **State of Utah**

CONTRACTOR:

Name:	Tyler Technologies, Inc. – Roxanne Nydegger
Address:	One Tyler Way, Yarmouth, ME 04096
Telephone:	(913)489-5218
Email:	NASPO@tylertech.com

PARTICIPATING ENTITY:

Name:	David Miller, State of Idaho Division of Purchasing
Address:	650 W. State St., Room 100, Boise, ID 83702
Telephone:	(208) 332-1604
Email:	ContractAdmin@adm.idaho.gov

Participating Entity Modifications and Additions to the Master Agreement

- ☐ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.
- ☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

- I. **GOVERNING LAW.** This PA and all orders issued thereunder by Purchasing Entities shall be construed in accordance with and governed by the laws of the state of Idaho. Any actions to enforce the provisions of this PA shall be brought in State district court in Ada County, Boise, Idaho.
- II. **ASSIGNMENT, MERGER, CONSOLIDATION OR CHANGE OF CONTRACTOR**
 - A. Consent Required. Assignments, mergers, consolidations, and changes of the Contractor under this PA are subject to the provisions of Idaho Code sections 67-1027 and 67-9230. Contractor shall not assign this PA, or its rights, obligations, or any other interest arising from the PA, or delegate any of its performance obligations, without the express written consent of the Purchasing Administrator and the Idaho Board of Examiners. Any entity into which Contractor may be merged or with which it may be consolidated, any entity resulting from any merger or consolidation to which Contractor is a party, or any entity succeeding to the business of Contractor shall not become the successor of Contractor without first obtaining the prior written approval of the Administrator of the Division of Purchasing and the Idaho State Board of Examiners.
 - B. Effect of Non-Compliance. At the option of the Purchasing Administrator, transfer without approval required by this section shall cause the annulment of the Contract. All rights of action for any breach of this Contract are reserved to the State notwithstanding such annulment. As provided in Idaho Code section 67-1027, the State shall not be obligated to pay the assignee until the assignment is recognized by the Idaho Board of Examiners and no damages shall accrue to Contractor or the assignee arising from the State's assignment and payment processes pursuant to Idaho Code sections 67-1027 and 67-9230
 - C. Assignment of Payments. Notwithstanding the foregoing, to the extent required by applicable law (including I.C. § 28-9-406), Contractor may assign its right to payment on an account provided that the Participating State shall have no obligation to make payment to an assignee until thirty (30) calendar days after Contractor (not the assignee) has provided the responsible procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The Participating State may treat violation of the clause as an event of default.
- III. **AMENDMENTS**
 - A. Amendments to the Master Agreement (including, but not limited to extensions, renewals, and modifications to the terms, conditions and pricing) will automatically be incorporated in this PA unless the Participating State elects not to incorporate an amendment by providing written notification to Contractor, which notice must be provided within ten (10) business days of the date of the amendment to the Master Agreement, in order to be effective. Failure to provide notice in accordance with this

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

section will result in the Master Agreement amendment automatically being incorporated in this PA.

- B. If the Contractor adjusts its prices specifically for Idaho pursuant to this PA due to Idaho's administrative fee (see section XIII, **Reporting and Idaho Technology Administrative Fee**, below), then the Contractor must provide an updated price list to the Division of Purchasing prior to price changes being effective.

IV. TERMINATION

- A. Termination of PA for Convenience. The Participating State may terminate this PA for its convenience, in whole or in part, with or without cause, upon thirty (30) calendar days' written notice to the Contractor specifying the date of termination.
- B. Termination of Order for Convenience. A Purchasing Entity may terminate its Order for its convenience, in whole or in part, with or without cause, upon thirty (30) calendar days' written notice to the Contractor specifying the date of termination. This authority shall apply to all new Orders as well as any Orders incorporated pursuant to Section XII of this PA. Contractor will be compensated for products or services rendered prior to the termination effective date.
- C. Termination for Fiscal Necessity. The State is a government entity, and it is understood and agreed that the State's payments under an Order placed under the PA shall be paid from Idaho State Legislative appropriations, funds granted by the federal government, or both. The Legislature is under no legal obligation to make appropriations to fulfill the Contract. Additionally, the federal government is not legally obligated to provide funds to fulfill the Contract. The Contract shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the Idaho State Legislature, or beyond any federal funds granted to the State, as may exist from time to time.

The State reserves the right to terminate the PA in whole or in part, and a Purchasing Entity reserves the right to terminate its order placed under the PA if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State or Purchasing Entity to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the State discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Contractor will be compensated for products or services rendered prior to the termination effective date. Further, in the event that funds are no longer available to support the Contract, as described herein,

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

the State and Purchasing Entity shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom. In the event of early Contract termination under this section, the State will collect all Contractor-owned equipment and accessory items distributed under the Contract within thirty (30) calendar days of Contract termination. Items will be collected at a central (or regional) location(s) designated by the State. Contractor will be responsible for all costs associated with packaging and removing all Contractor-owned items from the State-designated location(s), which must be completed within thirty (30) calendar days of written notification from the State. If Contractor fails to remove its items within that time period, the State may charge Contractor for costs associated with storing the items; and may otherwise dispose of the items as allowed by applicable law. At Contractor's request, the State shall promptly provide supplemental documentation as to such Termination for Fiscal Necessity. Nothing in this section shall be construed as ability by the State to terminate for its convenience.

- V. PUBLIC RECORDS.** Pursuant to Idaho Code title 74, chapter 1, information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. The Division of Purchasing and Purchasing Entities will not accept the marking of an entire document as exempt. In addition, the Division of Purchasing and Purchasing Entities will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. If the State or Purchasing Entity receives a request for materials claimed exempt by the Contractor, the State or Purchasing Entity shall notify the Contractor and shall request a redacted copy of the document. If Contractor does not provide a redacted version within two (2) business days of being notified of the public records request, the State or Purchasing Entity shall disclose the original document. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State or Purchasing Entity, or to provide a redacted copy within the specific time, shall constitute a complete waiver of any and all claims against the State or Purchasing Entity for damages caused by any such release.

The Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. If the State honors an exemption from the Idaho Public Records Act identified by Contractor, Contractor shall provide, at its expense the legal defense for such claim.

- VI. INDEMNIFICATION.** Contractor shall indemnify, defend and hold harmless the State, Division of Purchasing, state agencies, and any Purchasing Entity, its officers, agents and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits caused by or arising out of Contractor's negligent or wrongful performance, acts or omissions under the PA and any Orders placed pursuant to the PA, including those incorporated pursuant to Section XII of this PA, or Contractor's failure to comply with any state or federal statute, law, regulation or rule. This indemnification shall not apply to liability, claims, damages, losses, expenses, actions,

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

attorneys' fees, and suits solely caused by or arising out of negligent or otherwise wrongful acts, errors, omissions or fault of the State, including any state agencies, or any Purchasing Entity, or their employees, agents, representatives, or assigns.

- VII. LIMITATION OF LIABILITY.** To the maximum extent permitted by applicable law, in no event shall Contractor be liable for any special, incidental, punitive, indirect, or consequential damages whatsoever, even if Contractor has been advised of the possibility of such damages. Contractor's liability for damages to the State for any cause whatsoever is limited to ten million dollars (\$10,000,000); provided, however, that the following shall not be subject to the foregoing limit:
- A. Contractor's obligations under the patent and copyright indemnity required by this Agreement;
 - B. Contractor's failure to obtain the insurance required by this Agreement;
 - C. Claims for personal injury, including death;
 - D. Claims for damage to real property or tangible property to the extent damages arise from the Contractor's negligent acts or omissions or willful misconduct under the Agreement;
 - E. Damages arising from the reckless or willful misconduct of the Contractor, its employees, its subcontractors, or its agents; and
 - F. Government fines and penalties not imposed by the State to the extent damages arise from the Contractor's negligent acts or omissions or willful misconduct under the Agreement.
- VIII. INSURANCE.** In addition to the insurance types listed in the Master Agreement, Contractor shall also maintain the following:
- A. *Commercial Automobile* liability including owned (if any), non-owned, and hired liability with a combined single limit of one million dollars (\$1,000,000) each accident, and one million dollars (\$1,000,000) aggregate. If necessary, commercial umbrella or excess policy may be used to meet the limits required, providing the automobile liability is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements for acceptable carriers detailed in the Master Agreement.
 - B. *Professional Liability for IT Technology (or Technology Errors and Omissions) Insurance*, including security and privacy liability with limits of two million dollars (\$2,000,000) each claim/loss and four million dollars (\$4,000,000) aggregate. The policy shall cover professional errors and omissions for those services defined in the scope of services in the Master Agreement, this PA, or an Order pursuant to this PA. In the event that the professional liability insurance required by the PA is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised or purchased, if commercially and reasonably available, for a period of two (2) years beginning at the time work under this PA is completed. If Contractor contends that any of the insurance it maintains pursuant to other sections of this Section, or Section XX of the Master Agreement, satisfies this requirement (or otherwise insures the risks described in this

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

Section), then Contractor must provide proof of the same. The insurance shall provide coverage for the following risks:

- i. Liability arising from theft, dissemination, and use of confidential information (including but not limited to bank account, credit card account, personal information, such as name, address, social security numbers, etc., information) stored or transmitted in electronic form;
- ii. Network security liability arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, unless caused by a mechanical or electrical failure; and
- iii. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third party's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

C. *Commercial Crime/Employee Theft* coverage. Contractor shall maintain Employee Dishonesty coverage with a limit of one million dollars (\$1,000,000) each loss, and one million dollars (\$1,000,000) annual aggregate including coverage for Client's Property with the State included as Joint Loss Payee.

IX. USE OF THE STATE OF IDAHO NAME. Contractor shall not, prior to, in the course of, or after performance under the Contract, use the State's name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the State.

X. REQUIRED CERTIFICATIONS

A. Boycott of Israel. Pursuant to Idaho Code section 67-2346 (effective July 1, 2021), if payments under the PA exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

B. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.

XI. PROHIBITED TERMS

A. The Division of Purchasing and other Purchasing Entities in Idaho do not have the authority to bind the state of Idaho or an agency to the following terms. If the Master Agreement, amendment to the Master Agreement, or Order (including those Orders incorporated pursuant to Section XII) contain such a term, the term shall be void pursuant to Idaho Code section 67-9213.

- i. Terms waiving the sovereign immunity of the state of Idaho;

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

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- ii. Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of another state;
 - iii. Terms limiting the time in which the state of Idaho or its agencies may bring a legal claim under the PA to a time shorter than that provided in Idaho law; and
 - iv. Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code.
- B. Unless specifically authorized by the Idaho legislature, terms requiring an agency or the state of Idaho to indemnify a vendor shall be subject to the provisions of sections 59-1015, Idaho Code, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature or subject to appropriation shall be void pursuant to Section 67-9213, Idaho Code and Section 59-1016, Idaho Code.

XII. ORDERS

- A. Presumptive Applicability of PA. 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 and this PA, unless the parties to the order agree in writing that another contract or agreement applies to the order.
- B. Incorporation of Existing Agreements. Several public agencies in Idaho have previously entered into agreements with Idaho Information Consortium, LLC ("Tyler Idaho"), affiliate of Contractor, pursuant to, or incorporated by, "Access Idaho Services Agreement" between the Idaho Office of Information Technology Services (ITS) and Tyler Idaho, signed in 2019 and later amended ("legacy service agreements"). The services provided under these agreements will now be offered pursuant to this PA. This PA hereby incorporates by reference all active legacy service agreements as Orders pursuant to this PA, as if set forth in their entirety, subject to the following conditions:
- i. To the extent that the terms of the legacy service agreements conflict with the terms of this PA or the Master Agreement, the terms of the PA and Master Agreement shall take precedence, as detailed in Section III.1 of the Master Agreement;
 - ii. Services detailed in the Access Idaho Services Agreement itself, including maintenance of the Idaho.gov website, are not included in this Section XII and will not be incorporated into this PA;
 - iii. Within ninety (90) calendar days after execution of this PA (the "Transition Period"), rates charged for all legacy services shall comply with the pricing structure and rates detailed in Section XIV, below. Any changes to legacy services or pricing shall be negotiated with the Purchasing Entity and captured in writing through the termination of the legacy service agreement and placement of a new Order under the PA. The Idaho Technology Administrative Fee and Reporting requirements detailed in Section XIII of this PA shall begin upon execution of this PA;

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

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- iv. For purposes of reporting, the Order date of legacy service agreements being incorporated into this PA shall be upon expiration of the Access Idaho Services Agreement, as amended; the terms of this PA and Master Agreement shall take precedence on the Order date, except as detailed in Section XII.B.ii, above; and
 - v. The right of the Purchasing Entity to terminate its Order for convenience, as detailed in Section IV.B of this PA, shall apply to all legacy service agreements incorporated as Orders pursuant to this Section.
- C. Negotiation of Additional Terms. Purchasing Entities may have specific business needs unique to their agency or project. A Purchasing Entity may negotiate with Contractor to include additional or different terms in an Order to address such needs. When such terms are included in an Order, they shall take precedence over the terms of this PA; provided, however, that a Purchasing Entity may not include terms identified as prohibited in Section XI or negotiate fees higher than those detailed in Section XIV of this PA.

XIII. REPORTING AND IDAHO TECHNOLOGY ADMINISTRATIVE FEE

- A. Idaho Technology Administrative Fee. A Technology Administrative Fee will apply to all credit card transactions processed under this PA. On a quarterly basis, the Contractor shall remit to ITS an amount equal to one-half percent (0.5%) of all credit card transactions processed by Contractor under the PA for the preceding quarter. The credit card processing fees added to payment processing transactions shall be inclusive of the Idaho Technology Administrative Fee. For example: A \$100 transaction with a 2.5% processing fee. The fee is calculated to be \$2.50. The Idaho Technology Administrative fee portion is \$0.50 and the Contractor retains \$2.00 (subject to the NASPO Administrative Fee). Idaho Technology Administrative Fee Payment checks shall be made out and mailed to:
- Office of Information Technology Services
11331 W. Chinden Blvd., Suite B201
Boise, ID 83714
- B. Reporting Timeline. Administrative Fee payments and reports to ITS are due no later than sixty (60) calendar days after the end of each calendar quarter detailed below:
- 1st Quarter: July 1 – September 30
2nd Quarter: October 1 – December 31
3rd Quarter: January 1 – March 31
4th Quarter: April 1 – June 30
- C. Required Reports. The Quarterly Detailed Usage Report must accompany each Administrative Fee payment and be furnished electronically in Microsoft Excel format. The Detailed Usage Report must include at least the following: the public agency on behalf of which Contractor is processing credit card transactions, a description of the

CITIZEN ENGAGEMENT PLATFORMSLed by the **State of Utah**

transaction (e.g., vehicle registration), the number of transactions in the preceding quarter, the dollar amount of the transactions for the preceding quarter, and the applicable processing fee.

The report must be emailed to: ITSFinancialServices@its.idaho.gov

XIV. LIMITATIONS ON FEES

- A. For services other than those detailed below, the cost of services shall be the cost negotiated by the Purchasing Entity, not to exceed the costs detailed in the Master Agreement.
- B. Fees shall be limited as follows. Purchasing Entities may not negotiate higher fees unless explicitly permitted to do so in this section.
 - i. Credit card processing fees shall not exceed two and one-half percent (2.5%) which includes the NASPO Value Point Administrative Fee and the Idaho Technology Administrative Fee.
 - ii. All other products and services shall be paid in accordance with the legacy services agreements, or the Order signed by the Purchasing Entity, not to exceed the pricing in Contractor's Master Agreement. This includes additional flat fees associated with the cost of processing payments other than Visa, MasterCard or Discover (e.g., AMEX, PayPal, or other payment types), development and maintenance of a custom application such as a shopping cart, Appointment Scheduler/TeleGov; Engagement Builder; PayPort OTC; Scheduled Payments; and Prompt Pay.
 - iii. Notwithstanding any limitations detailed in this section, Contractor may continue to charge the fees permitted in the legacy service agreements during the Transition Period. If the Contractor and Purchasing Entity are not able to negotiate a new Order for legacy services being provided at a price that is not compliant with this section, the credit card processing fee shall be updated to comply with section XIV.B.i, and no additional fees may be charged for credit card processing. Contractor may terminate any legacy service agreement for convenience with thirty (30) days' notice.
 - iv. Contractor shall clearly identify all fees associated with its services in Orders, and shall not charge any fees in excess of those detailed in subsection XIV.B.i, above, or the Order, without prior written authorization from the Purchasing Entity.

- XV. ADDITIONAL REPORTING.** In addition to the reporting detailed in Section XIII above, Contractor shall provide a copy of all Orders, including legacy service agreements, as amended, within ninety (90) days of the effective date; and a quarterly report of all active Orders from the preceding quarter including at least the following information: public agency, description of services, status, total/ongoing cost, and amount paid during the preceding quarter. The Division of Purchasing and ITS may also request additional ad hoc reports and shall work with Contractor to determine appropriate format and timing for such additional reports.

PARTICIPATING ADDENDUM



CITIZEN ENGAGEMENT PLATFORMS

Led by the **State of Utah**

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- XVI.** 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.

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

PARTICIPATING ENTITY

CONTRACTOR

Signature: 	Signature: 
Name: Valerie Bollinger	Name: Elizabeth Proudfit
Title: Administrator, Division of Purchasing	Title: Division President
Date: 1/31/2024	Date: 1/31/2024

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

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