



STATE OF MICHIGAN PROCUREMENT
Department Technology, Management and Budget

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **250000000385**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	United Parcel Service	STATE	Program Manager	Tom Goodine	DTMB
	55 Glenlake Parkway NE			517-930-2103	
	Atlanta Georgia 30328			goodinet@michigan.gov	
	Ben Pena	Contract Administrator		Emily Massa	DTMB
	210-213-7462			517-897-7321	
	benitopena@ups.com			Massae@michigan.gov	
	CV0017056				

CONTRACT SUMMARY			
DESCRIPTION: Statewide Small Parcel Delivery Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
2/22/2025	11/27/2026		11/27/2026
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 30		NA	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☒ P-card ☒ Payment Request (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
NA			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER. Orders will be placed by Agencies as needed. This contract is written as a result of the National Association of State Purchasing Officials (NASPO) ValuePoint Participating Addendum, administered by the Lead State of Utah, MA065.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<u>\$10,000,000.00</u>

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name and Title

Agency

Date

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Master Agreement #: MA065

The Parties:

Contractor: **UPS**

Participating Entity: **STATE OF MICHIGAN**

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

- Small Package Delivery Services, as described in UPS's response to Solicitation CH12-36.

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum covers the **Small Package Delivery Services** covered in the above-referenced Master Agreement between the State of Utah and Contractor.
2. Participation: This Participating Addendum may be used by all state agencies. Further, this Participating Addendum may be used by other entities authorized to use statewide contracts in the State of Michigan, including MiDEAL members (collectively, "Other Purchasers"). MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. The State of Michigan and its officers and employees shall have no responsibility or liability for Other Purchasers. Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ben Pena
Address:	55 Glenlakes Parkway, Atlanta, GA 30328
Telephone:	210-213-7462
Fax:	NA
Email:	benitopena@ups.com

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PARTICIPATING ENTITY:

Name:	Emily Massa
Address:	320 S Walnut Street 2 nd Floor, Lansing Michigan 48933
Telephone:	517-897-7321
Fax:	N/A
Email:	massae@michigan.gov
Role:	Contract Administrator. The Contract Administrator is the only person authorized by the State to modify any terms of this Participating Addendum, and approve and execute any change under this Participating Addendum

Participating Entity

Name:	Thomas Goodine
Address:	7461 Crowner Dr Lansing MI 48913
Telephone:	517-930-2103
Fax:	
Email:	Goodinet@michigan.gov
Role:	Program Manager. The Program Manager for the State will monitor and coordinate the day-to-day activities of the Participating Addendum.

4. PARTICIPATING ENTITY MODIFICATIONS OR 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, **subject to the limitations, modifications, and additions included within this Participating Addendum.** Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

- 4.1.** Notwithstanding any language to the contrary anywhere in this contract or any document that is part of or referenced in this contract or furnished by Contractor in connection with performance under this contract, either directly or in a link: (a) any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason, (b) Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial, (c) Contractor agrees that the State shall not be bound by the laws of another state or country, or consent to the forum or jurisdiction of another state or country, and that the forum for

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any dispute resolution under this Participating Addendum is Michigan and that Michigan law, excluding choice of law principles, governs this Participating Addendum, (d) the State reserves all immunities, defenses, rights, claims, or actions arising out of the State's sovereign status and/or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights, claims, or actions, including without limitation any sovereign or governmental immunity, shall be implied or otherwise deemed to exist by reason of the State's entry into this Participating Addendum.

- 4.2. Duties of Contractor.** Contractor must perform the services and provide the deliverables (the “**Contract Activities**”) described in this Participating Addendum. Contractor must: (a) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract, (b) comply with all applicable State physical security policies and standards while on State property which will be made available upon request, and (c) be clearly identifiable while on State property and wear identification issued by the State upon request, and clearly identify themselves whenever making contact with the State.
- 4.3. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier, (b) when actually received if sent by mail without verification of receipt, or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 4.4. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Neither party has authority to contract for nor bind the other party in any manner whatsoever.
- 4.5. Assignment.** Except as expressly provided in this section, neither party may assign this Contract to any other party without the prior approval of the other party. The State may assign or transfer this Contract in whole or in part to another agency, department, bureau, commission of the State as required by Executive Order, law, or regulation.
- 4.6. Invoices and Payment.** Invoices must conform to the requirements communicated by the State. All undisputed amounts are payable within 30 days of the State's receipt. Contractor may only charge for Contract Activities provided under the Participating Addendum. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract. Any undisputed payments that are untimely are subject to MCL 17.54.

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The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time, within no more than 180 days. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any undisputed amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

For the avoidance of doubt, and notwithstanding anything in this Participating Addendum or the Master Agreement to the contrary, the State will be entitled to a credit equal to 100% of any late payment fees imposed for State's failure to pay undisputed amounts within 30 days of the State's receipt of the applicable invoice.

- 4.7. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in this Participating Addendum. Contractor must provide on-time delivery of packages. Failure to maintain at least a 95% annual on-time delivery rate, will result in a documented vendor performance and an annual 5% service credit based on annual spend (not to exceed \$50,000) to the State; provided, however, for purposes of the foregoing the calculation of annual on-time delivery will exclude any shipments subject to guaranteed service for which the State received a refund or credit as a result of Contractor's failure to meet such guaranteed service.

The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 4.8 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

- 4.8. Termination for Cause.** (a) The State may terminate this Contract for cause, in whole or in part, if Contractor: (i) endangers the value, integrity, or security of any facility, data,

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or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that would reasonably be expected to expose the State to liability; (iv) breaches any of its material duties or obligations under this Contract; or (v) fails to cure a breach within thirty (30) days' following its receipt of a notice of breach, provided, the State may immediately terminate this Contract without a cure period if it reasonably determines that such immediate termination is necessary to preserve safety or prevent future harm or disruption. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately upon expiration of the applicable cure period, if any, without remedy of the underlying material breach; or (ii) continue to perform pursuant to Section 4.10 Transition Responsibilities. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 4.9 Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable and documented costs in terminating this Contract. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable and documented costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, and court costs.

Contractor has the right to terminate as set forth in the Master Agreement.

4.9. Termination for Convenience. The State may on thirty (30) days' notice terminate this Contract in whole or in part without penalty and for any reason or no reason. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately upon expiration of the notice period, or (b) continue to perform the Contract Activities in accordance with Section 4.10, Transition Responsibilities. Contractor must submit all invoices for Contract Activities performed by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

4.10. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed **180**

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calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates, (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee, (c) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date, and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

4.11. Return of State Property. Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.

4.12. Indemnification. (a) Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all third-party actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), 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 Contract, (b) Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of the claim that the Product (as defined in Section 1.12 of the NASPO ValuePoint Master Agreement Terms and Conditions) or its use infringes Intellectual Property rights of another person or entity. 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: (i) provided by the Contractor or the Contractor's subsidiaries or affiliates. (ii) specified by the Contractor to work with the Product. (iii) 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 (iv) reasonably expected to be used in combination with the Product.

The State will notify Contractor in writing as promptly as reasonably practicable if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of

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the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel at its own expense; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

- 4.13. Infringement Remedies.** If, in either party's reasonable opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing, or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 4.14. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAID UNDER THIS CONTRACT IN THE PREVIOUS 12 MONTHS.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 4.15. State Data.** a. Ownership. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information) includes: (a) the State's data, user data, and any other data collected, used, processed, stored, or generated as the result of the Contract Activities, and (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license

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to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss, (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law, (c) keep and maintain State Data in the continental United States and (d) not use, sell, rent, transfer, distribute, commercially exploit, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795. c. Extraction of State Data. Contractor must, within 5 business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State. d. Backup and Recovery of State Data. Unless otherwise specified in a Statement of Work, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than 24 hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be

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responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section 4.15 are to be considered direct damages and not consequential damages.

- 4.16. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.
- a. Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality, (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality, or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all

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Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section 4.16.

- c. Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party 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 Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 15 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control or provide written certification of its destruction of the same; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.
- 4.17. Data Privacy and Information Security.** a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data, (b) protect

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against any anticipated threats or hazards to the security or integrity of the State Data, (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data, and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing.. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request. b. Audit by Contractor.(i) Contractor represents and warrants that it (1) conducts third-party audits of its data privacy and information security program as required to meet regulatory compliance obligations; and (2) no less than annually, Contractor engages a third-party firm that is certified to perform PCI-DSS assessments to perform Contractor's PCI-DSS assessment. (ii) During the Term, Contractor will, when requested by the State, provide a copy of Contractor's most recent PCI-DSS AoC (Attestation of Compliance) report to the State within two weeks of the State's request. c. Right of Audit by the State. Upon request by the State not more than once per calendar year, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program. d. Audit Findings. Contractor must implement any required safeguards as identified by any audit of Contractor's data privacy and information security program. e. State's Governance, Risk and Compliance (GRC) platform. Upon request, Contractor is required to provide assistance to the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process. Such assistance shall not exceed 100 hours in any 3 year time period. f. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to terminate this Contract or a Statement of Work for cause under Section 4.8 above without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

- 4.18. Records Maintenance, Inspection, Examination, and Audit.** Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed during ordinary business hours, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent

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invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 4.19. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) the Contract signatory has the authority to enter into this Contract; (e) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information in all material respects, and Contractor will inform the State of any material adverse changes; (f) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (g) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 4.8, Termination for Cause.
- 4.20. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (c) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 4.21. Compliance with Laws.** Contractor must comply with all applicable federal, state and local laws, rules and regulations.
- 4.22. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the

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duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

- 4.23. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 4.24. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint an agent in Michigan to receive service of process.
- 4.25. Non-exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 4.26. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of God that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 4.27. Website Incorporation.** The State is not bound by any content on Vendor's website unless expressly incorporated directly into the Contract
- 4.28. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 4.29. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 4.30. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; and insurance.
- 4.31. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after

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the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

5. **Orders:** Any order placed by a Participating Entity or Purchasing Entity for a service available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of this Participating Addendum unless the parties to the order agree in writing that another contract or agreement applies to such order. Purchasing Entities with a pre-existing account will be migrated to NASPO pricing upon confirmation from the Participating Entity's primary contact or the primary contact for this Participating Addendum.
6. **Insurance:** The Contractor shall, during the term of this Participating Addendum, maintain in full force and effect, the following insurance:
 - a. **General Requirements.** Contractor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Contractor waives all rights against the State for such damages. Failure to maintain required insurance does not limit this waiver.
 - b. **Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by DTMB Enterprise Risk Management.
 - c. **Primary and Non-Contributory Coverage.** All policies for which the State of Michigan is required to be named as an additional insured must be on a primary and non-contributory basis.
 - d. **Claims-Made Coverage.** If any required policies provide claims-made coverage, Contractor must:
 - i. Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract.
 - ii. Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract.
 - e. **Proof of Insurance.**
 - i. Insurance certificates showing evidence of coverage as required herein must be submitted to DTMB-RiskManagement@michigan.gov within 10 days of the contract execution date.
 - ii. Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.

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- iii. Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by DTMB Enterprise Risk Management.
 - iv. All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).
 - v. The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification/authorization, and balance sheets.
 - vi. In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to DTMB Enterprise Risk Management no later than 5 business days following such cancellation or nonrenewal.
- f. **Subcontractors.** Contractor is responsible for ensuring its subcontractors carry and maintain insurance coverage.
- g. **Limits of Coverage & Specific Endorsements**

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy endorsed or through blanket coverage to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed or through blanket coverage to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.

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Required Limits	Additional Requirements
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

- h. **Non-Waiver.** This Section 6 is not intended to and is not to be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations under this Contract, including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State.
7. **Marketing:** Contractor shall not refer to the Participating Entity in any publicity materials, information pamphlets, press releases, advertising, sales promotions, or marketing materials or similar communications to third parties except with the prior written consent of the Participating Entity.
8. **Non-Appropriation:** If during the term of this Participating Addendum, appropriations are insufficient to support purchases under this Participating Addendum, the Participating Entity may cancel this Participating Addendum, in whole or in part, immediately, or otherwise upon the expiration or removal of existing appropriations. If during the term of this Participating Addendum, appropriations are insufficient to support any Purchasing Entity's purchases under this Participating Addendum, the Purchasing Entity may cancel any or all relevant Delivery Orders, in whole or in part, immediately, or otherwise upon the expiration or removal of existing appropriations. A Purchasing Entity's actions under this clause will not affect this Participating Addendum or purchases made by other Purchasing Entities under this Participating Addendum.

If the Participating Entity's or Purchasing Entity's appropriations expire or are removed, the Participating Entity or Purchasing Entity will make good faith efforts to pay Contractor at the agreed-upon rates for such services rendered prior to the notice of non-Appropriation of funds. To the extent that the Participating Entity or Purchasing Entity notifies Contractor that no appropriated funds are available to pay Contractor for services, Contractor shall have the right, but not the obligation, to suspend the services that are no longer funded to the Participating Entity or Purchasing Entity providing notice without such action constituting a default of the Participating Addendum. Service to the Participating Entity and other Purchasing Entities will not be affected by funding deficiencies of a single Purchasing Entity. If the State terminates this Participating Addendum for Non-Appropriation, the State will pay all reasonable and documented costs for State approved Transition Responsibilities to the extent the funds are available.

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- 9. Purchase Order Terms and Conditions:** This Participating Addendum and the NASPO Master Agreement, (administered by the State of Utah) together with its exhibits (including Contractor's response to the NASPO solicitation attached thereto) (collectively the "Contract"), 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 Participating Addendum and the NASPO Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the NASPO Master 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 null and void. The terms and conditions of this Participating Addendum and the NASPO Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. A Purchasing Entity or Participating Entity Purchase Order is not required to initiate services. Services shall be initiated consistent with Contractor's ordering documentation. In the event a Purchasing Entity or Participating Entity Purchase Order is used for ordering services, Contractor's ordering documentation shall also apply.

Except for terms or conditions required by Contractor's ordering systems, or that have been expressly agreed by Contractor in this Participating Addendum, Master Agreement, or an amendment thereto, any terms or conditions contained in a Purchasing Entity or Participating Entity Purchase Order are deemed null and void and only Contractor's express written agreement to such purchase order shall be binding on Contractor. Further, fulfillment of an order shall not constitute Contractor's consent to or acceptance of any additional terms and conditions contained in a Purchasing Entity or Participating Entity Purchase Order.

The Participating Entity expressly agrees to the inclusion of Contractor's Rate and Service Guide and Tariff/Terms and Conditions of Service as set forth in the NASPO Master Agreement.

- 10. Purchasing Entity Fraud:** In the interest of reducing the risk of fraud and unauthorized re-selling of Contractor services, nothing in this Participating Addendum shall obligate Contractor to provide services to any organization or entity other than the Participating Entity and authorized Purchasing Entities. If Contractor believes that a Purchasing Entity's shipping characteristics evidence fraudulent use of this Participating Addendum for the benefit of for-profit companies or other unauthorized users, it may, in its sole discretion, suspend service to the Purchasing Entity without prior notice. If Contractor suspends services to a Purchasing Entity under this Section, Contractor will issue a notice to the State specifying why services are being suspended and providing the State a 30-day cure period. A suspension of services to a Purchasing Entity shall not affect the provision of services to any other Purchasing Entity.
- 11. Subcontractors:** The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used. The Participating Entity shall not be involved in the relationship between the prime contractor

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and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the Contractor.

12. Administrative Fee and Reporting:

Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), and MiDEAL members. Administrative fee payments must be made online by check or credit card at:
<https://www.thepayplace.com/mi/dtmb/adminfee>

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

13. Effective Date for Rates: The rates established under this agreement will be effective no sooner than three weeks after the Effective Date (defined below).

14. Term: This Participating Addendum shall become effective as of the date of the last signature below ("Effective Date") 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. In no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

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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:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	(775) 720-3404
Email:	sberry@naspovaluepoint.org

***[Please email fully executed PDF copy of this
document to***

PA@naspovaluepoint.org

***to support documentation of participation and posting
in appropriate data bases.]***