

**PARTICIPATING ADDENDUM  
WSCA-NASPO COOPERATIVE PURCHASING PROGRAM  
Computer Equipment  
Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT  
Master Agreement No: MNWNC-119  
Microsoft  
(hereinafter "Contractor")  
And  
State of Delaware  
Delaware Contract No. GSS15133-COMPUTER  
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1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: Desktops, Laptops, Tablets including Related Peripherals & Services, led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State that is authorized by that state's statutes to utilize state contracts, and which receives prior written approval of the state's chief procurement official.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum.

2. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Vendor consents to jurisdiction venue in the State of Delaware.
3. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
4. Order of Precedence:
  - a. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement.
  - b. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions).
  - c. The Solicitation including all Addendums; and
  - d. Contract Vendor's response to the Solicitation

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These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

5. Participating State Modifications or Additions to Master Agreement:

a. **MANDATORY INSURANCE REQUIREMENTS (29 Del. C. §6929)**

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a) Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate,  
and at least one of the following as outlined below
- b) Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate,  
or

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c) Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 aggregate,

or

d) Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate,

The successful vendor must carry (a) and at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage:

e) Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to other,

and

f) The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

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All contractors must carry (a), (e), and (f), and at least one of (b), (c), or (d), depending on the type of service or product being delivered.

Before any work is done with the State, a Certificate of Insurance referencing the name and contract number stated herein, shall be filed with the State. The certificate holder is as follows:

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**State of Delaware  
Government Support Services  
Contract # GSS15133-COMPUTER  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202**

**Note: The State of Delaware shall not be named as an additional insured.**

**Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.**

Notwithstanding anything to the contrary herein, the contractor may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at the contractor's sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.

**b. ELECTRONIC CATALOG**

At the discretion of Government Support Services, the successful vendor(s) may be required to submit their items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,

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- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award

**c. INTENT TO LOAD CATALOGS IN STATE ePROCUREMENT SOLUTION**

Bidders will be required to provide catalog(s) and the corresponding price list(s) for all awarded goods that are being offered to the State for purchase, and shall include all applicable and awarded price tiers available for each product. These documents may be required and supplied by the vendor in an electronic format as determined by the State over the life of the contract. The prices listed therein will be the prices paid by the State for purchases during the contract term.

At the discretion of the State, all awarded items will need to be provided in an electronic format for use in a hosted catalog offering which will be presented in the State's eProcurement solution. The awarded vendor(s) will be directed to supply the catalog file to an identified state representative or the State's designated eProcurement vendor at any time after execution of the contract, but no later than 45 days after the contract execution. The failure and/or inability to comply with this hosted catalog requirement may subject the awarded vendor to corrective action, up to and possibly including termination of the contract after thirty (30) days' written notice to cure.

A hosted catalog is defined as a vendor supplied electronic catalog of all awarded items, including item descriptions, attributes and the award prices, which will be stored and publically visible in the State's eProcurement solution.

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**d. RESTRICTED PRODUCTS**

The contractor shall not provide for procurement by State agencies the following:

- Cameras & Scanners
- Printers
- Copiers
- TV Tuners

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- Watches
- Cellular Phones

**e. SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**f. PERMITS AND LICENSES**

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Vendor at its own expense.

**g. PATENTED DEVICES, MATERIAL AND PROCESSES**

- 1) The Vendor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner, and shall file a copy of this agreement with the Agency.
- 2) The Vendor shall defend the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

**h. STATE OF DELAWARE BUSINESS LICENSE**

Prior to commence performance under this agreement, the Contractor shall either furnish Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application, where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P. O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone: 302-577-8778.  
<http://revenue.delaware.gov/services/BusServices.shtml>

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Information regarding the State of Delaware's decision to enter into this participating addendum will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

**i. EMERGENCY TERMINATION OF AGREEMENT**

- 1) Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
- 2) In the event the Vendor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

**j. INDEMNIFICATION**

- 1) **General Claims:** By submitting a proposal, the proposing vendor ("Vendor") agrees that in the event it is awarded a contract, it will defend the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, including expenses for attorney's fees, arising out of the Vendor's, its agents' and employees' work performance or services in connection with the contract (a "General Claim"). To qualify for such defense, the State of Delaware shall promptly notify Vendor in writing of any such General Claim of which the State of Delaware becomes aware which may give rise to a right of defense pursuant to this Section. Notice of any General Claim that is a legal proceeding, by suit or otherwise, must be provided to Vendor within thirty (30) days of the State of Delaware's first learning of such proceeding. If the State of Delaware's laws require approval of a third party to defend the State of Delaware, the State of Delaware, its agents or employees shall seek such approval and if approval is not received, Vendor is not required to defend the

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State of Delaware, its agents or employees. If a General Claim is settled, to the extent permitted by law, the State of Delaware, its agents or employees shall not publicize the settlement and will cooperate with Vendor so that Vendor can make every effort to ensure the settlement agreement contains a non-disclosure provision.

Notwithstanding anything to the contrary contained herein, the State of Delaware agree that Vendor has no obligation for any General Claim covered by this Section arising out of or resulting from the State of Delaware's, its agents' or employees' acts of negligence, gross negligence or misconduct. **THE FOREGOING SHALL CONSTITUTE THE STATE OF DELAWARE'S, ITS AGENTS' AND EMPLOYEES' SOLE REMEDY AND VENDOR'S SOLE AND EXCLUSIVE LIABILITY FOR ALL GENERAL CLAIMS.**

- 2) **IP Claims:** Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party (an "IP Claim"). In the event of any claim, suit or action by any unaffiliated third party against the State of Delaware that Vendor's solution, including all equipment, software, documentation, services and deliverables infringes that party's patent, copyright, trade secret or other proprietary right, the State of Delaware shall promptly notify the Vendor in writing and Vendor shall defend such claim, suit or action at Vendor's expense, and Vendor shall pay the amount of any resulting adverse final judgment (or settlement to which Contract Vendor consents).

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To qualify for such defense, the State of Delaware, its agents or employees shall promptly notify Vendor of any IP Claim of which the State of Delaware, its agents or employees become aware which may give rise to a right of defense pursuant to this Section. Notice of any IP Claim that is a legal proceeding, by suit or otherwise, must be provided to Vendor within thirty (30) days of the State of Delaware's first learning of such proceeding. If the State of Delaware's laws require approval of a third party to defend the State of Delaware, the State of Delaware, its agents or employees



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shall seek such approval and if approval is not received, Vendor is not required to defend the State of Delaware, its agents or employees. If an IP Claim is settled, to the extent permitted by law, the State of Delaware, its agents or employees shall not publicize the settlement and will cooperate with Vendor so that Vendor can make every effort to ensure the settlement agreement contains a non-disclosure provision.

Subject to the State of Delaware's, its agents' or employees' compliance with the notice and defense requirements set forth above, Vendor's obligation to defend the State of Delaware, its agents or employees against third party IP Claims will not apply to the extent that the claim or award is based on:

- a. Vendor's compliance with the State of Delaware's, its agents' or employees' designs, specifications, or instructions;
- b. Vendor's use of technical information or technology provided by the State of Delaware, its agents or employees;
- c. Non- Vendor software, modifications the State of Delaware, its agents or employees makes to, or any specifications or materials the State of Delaware, its agents or employees provides or makes available for, a Product;
- d. The State of Delaware's, its agents' or employees' combination of the Product with a non-Vendor product, data or business process; or damages based on the use of a non- Vendor product, data or business process;
- e. The State of Delaware's, its agents' or employees' use of either Vendor's Trademarks or the use or redistribution of a Product in violation of this Participating Addendum, or any other agreement incorporating its terms; or
- f. The State of Delaware's, its agents' or employees' use of a Product after Vendor notifies the State of Delaware, its agents or employees to discontinue that use due to a third party claim.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the Vendor (collectively "Products") is or in Vendor's reasonable judgment is likely to be, held to constitute an infringing product, Vendor shall at its expense and option either:

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- a. Procure the right for the State of Delaware to continue using the Product(s);
- b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing

If the foregoing options are not commercially reasonable for Vendor, or if required by a valid judicial or government order, Vendor may terminate the State of Delaware's, its agents' or employees' license or access rights in the Product(s). In such a case, Vendor will provide the State of Delaware, its agents or employees with notice and refund any amounts the State of Delaware, its agents or employees have paid for those rights to the Product.

THE FOREGOING SHALL CONSTITUTE THE STATE OF DELAWARE'S, ITS AGENTS' AND ITS EMPLOYEES' SOLE REMEDY AND VENDOR'S SOLE AND EXCLUSIVE LIABILITY FOR ALL IP CLAIMS.

**k. LIMITATION OF LIABILITY**

To the extent permitted by applicable law, Vendor's liability for damages under this Agreement shall be limited to either the sum of all payments made to the Vendor throughout the term of the contract or \$2 million, whichever is greater. This limitation does not apply to General Claims under Section J, Indemnification.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE,

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SHALL VENDOR OR ANY OF VENDOR'S EMPLOYEES OR AGENTS BE LIABLE TO THE STATE OF DELAWARE, ITS AGENTS OR EMPLOYEES FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR ANY OTHER THEORY OF LIABILITY.

THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE THE STATE OF DELAWARE'S, ITS AGENTS' OR EMPLOYEES' SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIMS AGAINST VENDOR OR ANY OF VENDOR'S EMPLOYEES OR AGENTS UNDER OR RELATED TO THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE LIABILITY CAP SET FORTH ABOVE SHALL NOT BE APPLIED CUMULATIVELY OR ON A PER CLAIM BASIS AND NOTHING SHALL BE CONSTRUED SO AS TO ENLARGE THAT AGGREGATE LIMIT.

THE PARTIES AGREE THAT THE FOREGOING SECTIONS REGARDING DEFENSE AND LIMITATIONS OF LIABILITY REPRESENT THE BASIS OF THE BARGAIN AND A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

**I. OPPORTUNITY BUYS**

The Director for the State of Delaware, Office of Management and Budget, Government Support Section can waive use of a central contract pursuant to 29 Del. C. §6911(e). A process has been developed to permit any vendor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a central contract. See

[http://gss.omb.delaware.gov/contracting/documents/agencyboilers/opportunity\\_buy\\_flowchart.pdf](http://gss.omb.delaware.gov/contracting/documents/agencyboilers/opportunity_buy_flowchart.pdf). The Director will afford any vendor on an existing central contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted vendor prior to a waiver being granted.

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**m. I FOUND IT CHEAPER**

Director for the State of Delaware, Office of Management and Budget, Government Support Section can waive use of a central contract pursuant to 29 Del. C. §6911(e). A process has been developed to permit any State employee or Vendor to identify a lower price for material and or services for consideration despite the existence of a central contract. See

[http://gss.omb.delaware.gov/contracting/documents/agencyboilers/opportunity\\_buy\\_found\\_cheaper\\_flowchart.pdf](http://gss.omb.delaware.gov/contracting/documents/agencyboilers/opportunity_buy_found_cheaper_flowchart.pdf). The Director will afford any Vendor on an existing central contract an opportunity to match or to beat the I Found It Cheaper suggestion and if not matched or beaten, approve the purchase via a waiver

**n. REQUIRED REPORTS**

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment A) shall be furnished in an Excel format and submitted electronically, no later than the last day of the month following the end of the calendar quarter, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to [vendorusage@state.de.us](mailto:vendorusage@state.de.us). Submitted reports shall contain accurate descriptions of the products, goods or services procured, purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this

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mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment B.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at [vendorousage@state.de.us](mailto:vendorousage@state.de.us) on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

**o. DELAWARE ECONOMIC IMPACT**

Each awarded vendor shall provide an annual report of the economic impact of their operations in Delaware. This report shall be submitted before the end of the third month after the close of the vendor's fiscal year. The following basic information is required under this agreement:

- # of Delaware Locations
- # of Delaware Employees
- Taxes, licenses & Fees Paid to Delaware

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- This may be payroll, franchise, service taxes, etc.
- Major Delaware Investments/ Partnerships
  - Amount paid to Major partners or Suppliers in Delaware
  - Highlight of Delaware MWBE, Veteran, Small Business (SBA criteria) and Disabled Veteran partnerships/ supply chain
  - Rent to Delaware Locations or value of Delaware real property
  - Utility Expenses paid to Delaware utilities

The report shall be submitted to [contracting@state.de.us](mailto:contracting@state.de.us)

**p. FUNDING OUT or NON-APPROPRIATION**

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

**q. INDEPENDENT CONTRACTORS**

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

**r. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED**

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Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s).

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

**s. FAIR BACKGROUND CHECK PRACTICES**

Pursuant to 29 Del. C. §6909B and effective November 4, 2014, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. §711(g) for applicable established provisions.

**t. VENDOR BACKGROUND CHECK REQUIREMENTS**

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete

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Administered by the State of Minnesota (hereinafter "Lead State")**

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Master Agreement No: MNWNC-119  
Microsoft  
(hereinafter "Contractor")  
And  
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background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at:

<https://desexoffender.dsp.delaware.gov/SexOffenderPublic/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

---

**u. SERVICING SUBCONTRACTORS**

- 1) Contractor may use State-approved Subcontractors or Distributors under this Participating Addendum for sales and service functions as defined herein.
- 2) Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating



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- Addendum, even if work is performed by Servicing Subcontractors.
- 3) Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting and administrative requirements.
  - 4) For the purposes of this Participating Addendum, Servicing Subcontractors are classified as follows:
    - a) "Authorized Reseller"
      - i. Authorized Resellers may provide quotes, accept purchase orders, fulfill purchase orders, perform maintenance/warranty services and accept payment from ordering agencies for products and associated services offered under this Participating Addendum.
      - ii. Authorized Resellers are responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative requirements.
      - iii. All purchase documents to Authorized Resellers shall reference the Participating Addendum Number and Caterpillar, Inc., as the Contractor.
    - b) "Agent"
      - i. Agents are only authorized to provide quotes, sales assistance, configuration guidance and ordering support for products and associated services offered under this Participating Addendum.
      - ii. Agents are not authorized to accept orders or payments.
  - 5) Subject to the approval of the State, Servicing Subcontractors may be added or deleted during the contract term.
  - 6) Proposed Servicing Subcontractors, as well as the Contractor, must complete the Delaware Substitute Form W-9.
  - 1) State-approved Servicing Subcontractors will be posted on the State's Contracting website.

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**v. ORDERING PROCEDURE**

Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the awarded vendor directly for all required resources. All consumables delivered by the Contractor and received by a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, fax or computer on-line systems. All Purchase Orders must include the contract number.

**w. BILLING**

The Contractor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. The Contractor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Contractors shall be required to report semi-annually opportunities to enhance the discounts achieved.

**x. METHOD OF PAYMENT**

- 1) For each P.O. issued as part of this contract, the State will pay Vendor monthly, within thirty (30) days of receipt of the Vendor's billing, the amount which is legitimately earned by the Vendor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.
- 2) Final settlement for total payment to the Contractor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

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- 3) No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.
- 4) The agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Contractors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACI or check. Should the Contractor wish to provide a financial incentive to not process payment by P-Card, they are to prepare a proposal to clearly outline any incentives for alternative payment methods the Contractor is willing to accept.

**y. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS**

As a central contract, this agreement shall include individual orders from state agencies and other entities authorized by law to procure from this contract. The individual orders may be terminated as follows:

- 1) **Termination for Cause** - If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Contractor shall be

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entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.

- 2) **Termination for Convenience** - The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.
- 3) **Termination for Non-appropriation** - In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

**z. TERMINATION OF PARTICIPATING ADDENDUM**

As a central contract, the contract resulting from this RFP may be terminated as follows by Government Support Services.

- 1) **Termination for Cause**: If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the

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option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have not less than ten (10) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

- 2) **Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
- 3) **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is

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available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

**aa. RIGHTS AND OBLIGATIONS**

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the term of this agreement, unless and until a valid executed purchase order has been approved by the State of Delaware Secretary of Finance, and all reasonable procedures of the State of Delaware Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

**bb. ASSIGNMENT OF ANTITRUST CLAIMS**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired for the State pursuant to this contract.

**cc. REMEDIES**

Except as otherwise provided in this Participating Addendum, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this addendum, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

**dd. AUDIT ACCESS TO RECORDS**

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the State, upon

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request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Contractor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

**ee. SUBCONTRACTS**

Subcontracting is permitted under this Participating Addendum. However, every subcontractor, authorized representative or reseller shall be identified (Attachment C) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Contractor shall be responsible for compliance by the subcontractor or reseller with all terms, conditions and requirements of the Master Agreement and this Participating Addendum and with all local, State and Federal Laws. The Contractor shall be liable for any noncompliance by any subcontractor or reseller. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

**ff. CONTRACTOR EMERGENCY RESPONSE POINT OF CONTACT**

The Contractor shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week

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where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan dated November 2009 or in the event of a local emergency or disaster where a governmental entity other than a State Agency requires the services of the Contractor.

**gg. TAX EXEMPTION**

- 1) Material covered by this proposal is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.
- 2) Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Contractor.

**hh. DOCUMENT EXECUTION**

The State of Delaware requires completion of the Delaware Substitute Form W-9 to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record. The Taxpayer ID (SSN or EIN) and Applicant (vendor) name are submitted to the Internal Revenue Service for "matching." If the Taxpayer ID and name do not match, the vendor record cannot be approved.

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It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

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



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**Lead State**

Contact: Susan Kahle  
Address: 50 Sherburne Ave  
112 Admin Bldg  
St Paul, MN 55155-1402  
Phone: 651-201-2434  
Fax: 651-297-3996  
Email: [susan.kahle@state.mn.us](mailto:susan.kahle@state.mn.us)

**Contractor**

Contact: Maria Stinson  
Address: Microsoft  
One Microsoft Way  
Redmond, WA 98052-8300  
Phone: 425-538-2867  
Fax: 425-936-7329  
Email: [marstin@microsoft.com](mailto:marstin@microsoft.com)

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Participating Entity

Contact: Theresa Newman  
Address: Government Support Services  
100 Enterprise Place  
Suite # 4  
Dover, DE 19904-8202  
Phone: 302-857-4552  
Fax: 302-739-3779  
Email: [theresa.newman@state.de.us](mailto:theresa.newman@state.de.us)

7. Partner Utilization: Each state represented by WSCA-NASPO participating in this Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
- 
8. Terms. The Participating State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.
9. 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

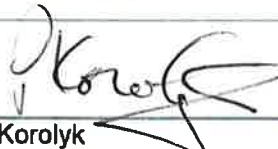
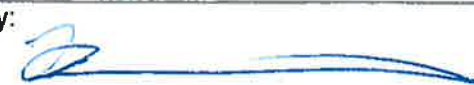
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(and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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

|  |   |
|--|---|
| State of Delaware  | Microsoft   |
| By:  | By:  |
| Peter Korolyk  | Name: Margaret Arakawa  |
| Deputy Director, Government Support Services   | Title: GM US M&O  |
| Date: 4/4/16   | Date: 4/1/16  |

For questions on executing a participating addendum, please contact:

**WSCA-NASPO**

|                                     |  |
|-------------------------------------|--|
| Cooperative Development Coordinator | Tim Hay  |
| Telephone                           | 503-428-5705   |
| E-mail                              | <a href="mailto:thay@wsca-naspo.org">thay@wsca-naspo.org</a> |

Attachment A

STATE OF DELAWARE  
MONTHLY USAGE REPORT

FOR ILLUSTRATION PURPOSES ONLY

| State of Delaware              |                            |             |        |                    |                      |                 |     |                              |             |
|--------------------------------|----------------------------|-------------|--------|--------------------|----------------------|-----------------|-----|------------------------------|-------------|
| Monthly Usage Report           |                            |             |        |                    |                      |                 |     |                              |             |
| Supplier Name:                 |                            |             |        | Report Start Date: |                      |                 |     |                              |             |
| Contact Name:                  |                            |             |        | Report End Date:   |                      |                 |     |                              |             |
| Contact Phone:                 |                            |             |        | Today's Date:      |                      |                 |     |                              |             |
| Agency Name or School District | Division or Name of School | Budget Code | UNSPSC | Item Description   | Contract Item Number | Unit of Measure | Qty | Contract Proposal Price/Rate | Total Spend |
|                                |                            |             |        |                    |                      |                 |     |                              | \$0.00      |
|                                |                            |             |        |                    |                      |                 |     |                              | \$0.00      |
|                                |                            |             |        |                    |                      |                 |     |                              | \$0.00      |
|                                |                            |             |        |                    |                      |                 |     |                              | \$0.00      |
|                                |                            |             |        |                    |                      |                 |     |                              | \$0.00      |

**Note:** A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in EXCEL and sent as an attachment to [vendorusage@state.de.us](mailto:vendorusage@state.de.us). It shall contain the six-digit department and organization code for each agency and school district.



## Attachment C

## SUBCONTRACTOR INFORMATION FORM

| PART I – STATEMENT BY CONTRACTOR           |  |                    |
|--|--|--------------------|
| 1. CONTRACT NO.<br>GSS12663-HVYEQUIP       | 2. Proposing Vendor<br>Name:   | 3. Mailing Address |
| 4. SUBCONTRACTOR                           |  |                    |
| a. NAME                                    | 4c. Company OSD Classification:<br><br>Certification Number: _____   |                    |
| b. Mailing Address:                        | 4d. Women Business Enterprise <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>4e. Minority Business Enterprise <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>4h. Service Disabled Veteran Owned<br>Business Enterprise <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                    |
| 5. DESCRIPTION OF WORK BY SUBCONTRACTOR    |  |                    |
| 6a. NAME OF PERSON<br>SIGNING              | 7. BY (Signature)  | 8. DATE SIGNED     |
| 6b. TITLE OF PERSON<br>SIGNING             |  |                    |
| PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR |  |                    |
| 9a. NAME OF PERSON<br>SIGNING              | 10. BY (Signature)   | 11. DATE SIGNED    |
| 9b. TITLE OF PERSON<br>SIGNING             |  |                    |

\* Use a separate form for each subcontractor



**State of Delaware  
Office of Supplier Diversity  
Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.



**Complete application and mail, email or fax to:**

Office of Supplier Diversity (OSD)

100 Enterprise Place, Suite 4

Dover, DE 19904-8202

Telephone: (302) 857-4554 Fax: (302) 677-7086

Email: [osd@state.de.us](mailto:osd@state.de.us)

Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.

