

**PARTICIPATING ADDENDUM
NASPO ValuePoint**

**Computer Equipment and Related Peripherals and Services
Administered by the State of Minnesota (hereinafter "Lead State")**

Master Agreement No: MNWNC-119

(hereinafter "Master Agreement" or "Contract")

Microsoft Corporation

(hereinafter "Contractor" or "Contract Vendor")

And

Georgia Department of Administrative Services

(hereinafter "DOAS" or "Participating Entity")

1. SCOPE

The State of Minnesota, Department of Administration, Materials Management Division publicly posted a Request for Proposal on behalf of the State of Minnesota and NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint") resulting in a Master Agreement Award. Evaluation was conducted by a multi-state sourcing team resulting in the Minnesota NASPO ValuePoint Master Agreements with qualified manufacturers for **Computer Equipment and Related Peripherals and Services**.

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 Entity in this Participating Addendum.

Band 1: Desktop	Band 4: Server
Band 2: Laptop	Band 5: Storage
Band 3: Tablet	Band 6: Ruggedized Devices

Participating Entity/Entity Scope Exclusions:

Notwithstanding the foregoing, the following items listed within the awarded Master Agreement are expressly EXCLUDED from the scope of this Participating Addendum.

- Band 1: Desktop
- Band 4: Server
- Band 5: Storage
- Band 6: Ruggedized Devices

The Contractor's Master Agreement products or services listed on the Contractor's page of the NASPO ValuePoint website (excluding Bands 1, 4, 5 and 6) are included in this Participating Addendum only if they are not offered on a Mandatory Statewide Contract. In the event, they are offered on a Mandatory Statewide Contract products or services may be procured under this Participating Addendum if a waiver is granted by the Participating Entity.

This Participating Addendum establishes Contractor as a non-exclusive, non-mandatory source of supply.

2. PARTICIPATION

All entities authorized to make purchases pursuant to this Participating Addendum shall be referred to collectively as "Authorized Users". This NASPO ValuePoint Master Agreement may be used by all state and local governmental entities, and public institutions of higher education authorized to use contracts executed by the Georgia Department of Administrative Services in the State of Georgia. Pursuant to O.C.G.A. 50-5-57, DOAS hereby certifies the Contractor as a source of supply to Authorized Users for the goods and services available to Authorized Users pursuant to the Master Agreement and this Participating Addendum. Orders shall be placed individually and from time to time by Authorized Users. The execution of this Addendum only establishes the Contractor as an authorized source of supply by DOAS and creates no financial obligation on the part of DOAS. Authorized Users are solely and individually financially responsible for their respective purchases. The Participating Addendum does not guarantee any minimum level of purchases. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

With respect to any "Educational Discount Price", offered by Contractor pursuant to this Participating Addendum, the parties agree that the following Authorized Users shall be eligible to receive any Educational Discount Price: Board of Regents of the University System of Georgia and all of its colleges and universities, the Technical College System of Georgia and all of its technical schools, the State Board of Education, the Georgia Department of Education, the Georgia Academy for the Blind, the Georgia School for the Deaf, the Atlanta Area School for the Deaf, public K-12 schools, public boards of education, "local school systems" and "local units of administration" as those terms are defined by O.C.G.A. Section 20-2-242, and any other Authorized User identified by the parties as an educational entity.

The laws of the State of Georgia shall govern this Participating Addendum. Nothing under this Participating Addendum or the Master Agreement shall be deemed or construed as a waiver of the State's right of sovereign immunity. The Participating Entity and Authorized Users are agreeing to the terms of the Master Agreement and Participating Addendum only to the extent the terms are not in conflict with Georgia law.

Authorized Users, as a political subdivision of the State of Georgia, may not sign their own Participating Addendum, unless approved by the Chief Procurement Officer of the state where the Authorized Users is located.

3. ORDER OF PRECEDENCE

- (i) 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 Contractor under the Terms of Minnesota NASPO ValuePoint Master Agreement;
- (ii) NASPO ValuePoint Master Agreement Terms & Conditions, including the applicable Exhibits to the Master Agreement;
- (iii) The Solicitation;
- (iv) Contractor's response to the Solicitation, as revised and accepted by the Lead State.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the 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 Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor. The solicitation language prevails over Contractor's response to the solicitation unless a mutually agreed exception has been negotiated.

4. PRIMARY CONTACTS

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

Contractor:

Name:	Kalin McKenna
Address:	700 Bellevue Way NE, Floor 25, #25361, Bellevue WA 98004
Telephone:	(425) 705-7939
Fax:	(425) 936-7329 Attn: LS/ 25361
Email:	kalinmc@microsoft.com

Participating Entity:

Name:	Dr. Carl Hall
Address:	200 Piedmont Avenue, SE Suite 1308, West Tower Atlanta, GA 30334
Telephone:	404-657-4254
Email:	Carl.hall@doas.ga.gov

5. Participating Entity/Entity Modifications or Additions to the Master Agreement

The following changes modify or supplement the Master Agreement terms and conditions.

1) TERM

The term of this Participating Addendum, State Contract Number: 99999-SPD-T20190904-0001 shall be effective October 1, 2019 through March 31, 2020 and coterminous with the Master Agreement term unless otherwise cancelled or terminated in accordance with the provisions of this Participating Addendum or the Master Agreement. Lead State amendments to extend the term date are automatically incorporate into this Participating unless terminated early in accordance with the terms and conditions of the Master Agreement or this Participating Addendum.

2) CONFIGURATION DOLLAR LIMITS

As referenced in the Master Agreement, Participating Procurement Officials may increase or decrease the configuration limits, as defined in their Participating Addendum. The State of Georgia elects not to impose a configuration dollar limit in this Participating Addendum.

3) NON-EXCLUSIVE CONTRACT

The contract shall be non-exclusive and shall not in any way preclude the State of Georgia from entering into similar contracts and/or arrangements with other vendors or from acquiring similar, equal or like goods and/or services from other entities or sources.

4) CHANGES IN CONTRACTOR REPRESENTATION

DOAS requires the assignment of a primary account representative. The Contractor shall identify by name and location the primary account representative for each awarded category/band who will be responsible for the performance of the contract. The Contractor must also provide a next in line account

representative, that will serve as a back-up for the State. The State requires the Contractor to notify DOAS of any changes in key account representatives, in writing promptly following the change.

5) AMENDMENTS

Any further Amendments to the Master Agreement after the Effective Date of this Participating Addendum, that have been approved by the Lead State, will not be applicable to this Participating Addendum and will not be valid unless made in writing as an amendment to this Participating Addendum, signed by the parties and approved as required by the laws of the State of Georgia. No oral understanding or agreement not incorporated in this Participating Addendum is binding on any of the parties.

6) SUB-CONTRACTORS, PARTNERS, RESELLERS

The Contractor shall identify its strategic business partners related to services provided under this contract, including but not limited to, all sub-Contractors or other entities or individuals who may be a party to a joint venture or similar agreement.

Contractor must ensure that any sub-Contractor, fulfillment partner, dealer, or reseller who makes sales under this Participating Addendum complies with the terms of the Master Agreement and this Participating Addendum.

7) RESELLER APPROVAL

Contractors wishing to add a Reseller must follow the State approval process. Reseller Partners must be approved in advance by the State as a condition of eligibility under this Contract. The State reserves the right to rescind any such participation. The State also reserves the right to request the Contractor to name additional Resellers, in the best interest of the State, at the State's sole discretion.

The Contractor must complete and submit the following forms as part of the State Reseller approval process:

- Sales and Use Tax Form – Populated with Reseller information
- Debarment Letter – Contractor statement indicating Reseller is not debarred (Federal or State level)
- E-Verify Form
- DOAS Reseller Request/Approval Spreadsheet – Contractor to complete DOAS approval spreadsheet with Reseller contact information and PO instructions. Contractor shall specify whether orders must be placed directly with Contractor, or if orders may be placed directly with the designated Reseller. Contractor must provide the State, in advance, all necessary ordering information, billing address and Federal Identification Number.

Approved Resellers must be eligible to quote lower than or equal Contract pricing under this Participating Addendum. Contractors are encouraged to identify multiple approved Resellers to participate in competitive transactions.

Contractor shall be responsible for Reseller performance and compliance with all Contract terms and conditions. Products purchased through Reseller must be reported by the Contractor in the required Quarterly Sales Reports to the State.

Prompt notice to DOAS is required by the Contractor, in the event, a change in Reseller's status occurs during the Contract term.

8) STATE OF GEORGIA PAYMENT METHODS

All purchases made by Authorized Users shall be exempt from sales tax. It is the responsibility of the Authorized User representative to provide the Authorized User's tax identification number as needed at the point of sale.

The State of Georgia provides for the use of multiple payment methods including Purchasing Card (PCard) and Automated Clearing House (ACH) transfers. DOAS will determine the most advantageous method(s) of Contractor payment. Contractors need to be prepared to accommodate any and all forms of payments.

The State of Georgia PCard may be used by authorized government employees of certain governmental entities electing to participate in the program to purchase necessary supplies. Contractor agrees to accept payment via PCard and shall impose no fee on either DOAS or any Authorized User for the use of the State of Georgia PCard

The Contractor shall keep P-Card information confidential and shall not disclose the State of Georgia numbers except as expressly authorized by DOAS. The Contractor represents that State of Georgia payments will be processed, transmitted and stored in compliance with the Payment Card Industry Data Security Standard. The Contractor shall provide immediate written notice to the current DOAS Contract Administrator in the event of (1) any unauthorized disclosure of State of Georgia P-Card Information or (2) Contractor's failure to maintain compliance with the Payment Card Industry Data Security Standard in the Contractor's contract performance. The Contractor agrees to cooperate with DOAS, Authorized Users, and DOAS contractual partner(s) for P-Card in resolving any issues or disputes.

DOAS has entered into a contract with its PCard provider, Bank of America, to provide the ePayables solution which will allow DOAS and certain Authorized Users to facilitate electronic payment by DOAS and Authorized Users to the Contractor. DOAS may elect in the future to utilize the ePayables solution.

The Contractor shall keep ePayables information confidential and shall not disclose the State of Georgia numbers except as expressly authorized by DOAS. The Contractor represents that State of Georgia payments will be processed, transmitted and stored in compliance with the Payment Card Industry Data Security Standard. The Contractor shall provide immediate written notice to the current DOAS Contract Administrator in the event of (1) any unauthorized disclosure of State of Georgia ePayables Information or (2) Contractor's failure to maintain compliance with the Payment Card Industry Data Security Standard in the Contractor's contract performance. The Contractor agrees to cooperate with DOAS, Authorized Users, and DOAS contractual partner(s) for ePayables in resolving any issues or disputes.

9) ADMINISTRATIVE FEE AND SALES REPORTING SUBMISSION

Pursuant to O.C.G.A. Section 50-5-51(10), DOAS has the authority to collect monies, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to O.C.G.A. Section 50-5-57. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new contracts, training, and technology. DOAS requires each Contractor to pay to DOAS an administrative fee on all sales pursuant to the resulting contract. The administrative fee amount for this contract is 1.5 percent (%). **CONTRACTOR MUST INCLUDE THE IDENTIFIED PERCENT ADMINISTRATIVE FEE (HEREINAFTER, "THE FEE") IN THE PRICING.** All Contractors must agree that the Fee will not be identified separately from the product and/or service pricing offered to Authorized Users wherever that pricing may appear (website, catalog, invoices, etc.). This Fee will be collected by the Contractor and remitted to DOAS in accordance with the following paragraphs.

- a. Quarterly Payment and Sales Reporting Requirements. The Quarterly Sales Report must be received by DOAS twenty (20) days after the end of the Fiscal Quarter through

submission within the Contractor Portal of Team Georgia Marketplace, and the Fees must be received as a response to an invoice generated by DOAS between the time of receipt of the invoice and forty-five (45) days after the end of the fiscal quarter as defined by the table below:

<i>DOAS' Fiscal Quarters</i>	<i>Months</i>	<i>Contractor's Quarterly Sales Report Due Date</i>	<i>Contractor's Payment Due Date (In Response to DOAS generated Invoice)</i>
<i>Quarter 1</i>	<i>July 1st – September 30th</i>	<i><u>October 20th</u></i>	<i><u>November 15th</u></i>
<i>Quarter 2</i>	<i>October 1st – December 31st</i>	<i><u>January 20th</u></i>	<i><u>February 15th</u></i>
<i>Quarter 3</i>	<i>January 1st – March 31st</i>	<i><u>April 20th</u></i>	<i><u>May 15th</u></i>
<i>Quarter 4</i>	<i>April 1st – June 30th</i>	<i><u>July 20th</u></i>	<i><u>August 15th</u></i>
			<i>30 DAYS FOLLOWING TERMINATION OF SWC</i>

At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report and submit the file through the Contractor Portal of Team Georgia Marketplace, including the Contractor's most up-to-date Invoice Contact Name (Billing Contact), Contractor Billing Address, and Contractor Billing E-Mail. In the event that no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating that no sales have occurred, and submit the file through Contractor Portal of Team Georgia Marketplace. On the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, the Contractor shall remit a payment of fees to DOAS in response to a DOAS generated invoice, through Electronic Funds Transfer (EFT). By submission of these reports and corresponding Contractor payments, Contractor is certifying their correctness.

- b. Auditing and Contract Close Out. All sales reports and Fee payments shall be subject to audit by the State. Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the Participating Addendum for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Upon receiving written notice from the State, Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Participating Addendum, during normal business hours. Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses material incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities. In no event shall Contractor retain any amount of

money in excess of the compensation to which Contractor is entitled and any Fees owed DOAS shall be paid within thirty (30) calendar days of termination of the Participating Addendum for any reason.

- c. **Modifying or Canceling the Fee.** DOAS reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.
- d. **Late Payment Fee.** In the event DOAS does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree the Contractor must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

$$(\text{Administrative Fee Amount Due}) \times (18\%) = X$$

$$X / 365 \text{ (366 for leap years)} = Y$$

$$Y \times (\text{Number of Days Payment is Late}) = \text{Interest Owed}$$

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting DOAS in writing of the Contractor's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund or credit the overpayment amount to the Contractor no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment. DOAS will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.

- e. **Default.** THE CONTRACTOR'S RESPONSIBILITY TO COLLECT AND REMIT THE ADMINISTRATIVE FEE ON BEHALF OF DOAS IS A SERIOUS RESPONSIBILITY AS THE CONTRACTOR IS HANDLING STATE FUNDS. Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring Contractor in default and recovering all outstanding Fees and interest.

10) ORDERS

Any order placed by an Authorized User for a product and/or service available under the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

The State instructs Participating Entities within Georgia to include the Participating Entity Contract Number: 99999-SPD-T20190904-0001 and the Master Agreement Number: MNWNC-119 on all purchase orders issued to Contractor.

Orders will be placed by an Authorized User directly with Contractor or approved sub-Contractor, fulfillment partner, dealer or reseller.

The State of Georgia constitution prohibits State entities from pledging the State's credit. Accordingly, entities of the State of Georgia may only be obligated for the amount indicated in a purchase order

executed by the state entity. Contractor shall ensure that all sales to entities of the State of Georgia and any supplemental agreements comply with the provisions of the "Contracting with the Georgia Department of Administrative Services" memorandum attached hereto as Exhibit A.

11) COMPENSATION

- (i) Pricing: Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
- (ii) Delay of Payment Due to Contractor's Failure: If Contractor has failed to perform or deliver any product, software or service as required by the Master Agreement and Participating Addendum, the Contractor shall not be entitled to any compensation under the Master Agreement and Participating Addendum until such service or product is performed or delivered. In this event, the Authorized Users may withhold that portion of the Contractor's compensation which represents payment for software, products, and/or services that were not performed or delivered.
- (iii) Payment: Payment terms shall be as specified in the Invoice.
 - a. Invoices. Invoices for payments must be submitted by the Contractor or Authorized Reseller to the Authorized User requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the Authorized User, and no action by the Authorized User, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract. Authorized Users are solely and individually financially responsible to their respective purchases. Participating Entity shall not be responsible for payment of any amounts owed by other Authorized Users.
 - b. Inspection and Approval. Final inspection and approval of all purchases under the contract shall be performed by the designated Authorized User officials. Payments shall be made in accordance with the Master Agreement, provided that Authorized Users shall have no obligation to pay for contractual deliverable(s) purchased hereunder until such contractual deliverable(s) are received and accepted by the applicable Authorized User
 - c. Travel Expenses. Expenses for travel shall not be reimbursed unless specifically permitted under the Master Agreement. All travel must be approved in advance by the Authorized User. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State, available here: <https://sao.georgia.gov/state-travel-policy>.
 - d. Responsibility for Taxes: The State of Georgia and its agencies shall not be responsible for, or indemnify a Contractor for, any federal, state, or local taxes which may be imposed or levied upon the subject matter of this Agreement.
 - e. Federal Funds. Payments may be made from federal funds obtained by the State. The Contractor is responsible for its compliance with all federal requirements imposed on these funds. Solely to the extent required for compliance with applicable federal laws, regulations and federal grant requirements, Authorized Users may include additional contract terms and conditions with their PO's that incorporate language required by federal grant conditions.

12) DELIVERY AND ACCEPTANCE

All products shall be shipped F.O.B. destination Freight Prepaid. Destination shall be the location(s) specified or provided through the Authorized User Purchase Instrument. All shipped items shall be at the Contractor's risk until they have been delivered and accepted by the Authorized User. All items shall be subject to inspection on delivery.

13) LEASING AND FINANCING

Contractor is authorized to offer leasing to Authorized Users provided any such lease transaction entered into shall be subject to the terms of the Master Agreement and this Participating Addendum and shall occur using the approved templated attached hereto as Attachment 1A. Contractor is not authorized to provide financing to Authorized Users unless pre-approved in writing by Participating Entity and using a financing template pre-approved by Participating Entity.

Authorized User Leases and Financing Agreements Survive Termination of the Participating Addendum. Upon expiration of the Participating Addendum or in the event of termination of the Participating Addendum for any reason by the Participating Entity, Authorized User leases and financing agreements entered into under this Participating Addendum shall survive and continue in accordance with the terms and conditions of this Participating Addendum and each Authorized User's lease and financing agreement. Contractor shall continue to perform its obligations and honor the terms, conditions and pricing as set forth in the Authorized User lease and financing agreements as applicable until the expiration or termination of such agreements. Upon expiration or termination of the Participating Addendum, Authorized Users may, at their sole discretion, elect to exercise any remaining renewal options for existing lease or financing agreements in accordance with the terms of the agreements; however, no lease or financing agreement shall be extended beyond the total duration of the lease or financing agreement as established at the time the Participating Addendum expires or is terminated unless otherwise approved by the Participating Entity.

14) SOFTWARE LICENSES

Contractor shall provide software licenses in compliance with the terms of the Master Agreement and this Participating Addendum. To the extent that software licenses conflict with the terms and conditions of this PA, this PA shall control. Subject to Authorized User's compliance with the payment provisions, Contractor shall grant Authorized User a perpetual, irrevocable, non-exclusive, royalty-free license in Contractor's pre-existing intellectual property that is contained in the products, materials, equipment or services that are purchased through this Participating Addendum.

(i) Exclusions. Except as expressly permitted by the Master Agreement and this Participating Addendum, the Authorized Users agree that they will not:

- a. Lease, loan, resell, sublicense or otherwise distribute the software to parties who are not State of Georgia government entities;
- b. Create derivative works based on the software;
- c. Reverse engineer, disassemble, or decompile the software; or
- d. Remove any identification or notices contained on the software.

15) TERMINATION

Immediate Termination. Pursuant to O.C.G.A. Section 50-5-64, any purchase made pursuant to this Participation Agreement will terminate immediately and absolutely if DOAS or the Authorized User determines that adequate funds are not appropriated or granted or funds are de-appropriated such that DOAS or the Authorized User cannot fulfill obligations under the Participating Addendum, which determination is at DOAS and/or Authorized User's sole discretion and shall be conclusive. Further, DOAS may terminate the Participating Addendum for any one or more of the following reasons effective immediately without advance notice:

- (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Participating Addendum effective as of the date on which the license or certification is no longer in effect;
- (ii) DOAS determines that the actions, or failure to act, of the Contractor, its agents, employees or sub-Contractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
- (iii) The Contractor fails to comply with confidentiality laws or provisions.

Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the Participating Entity to declare the Contractor in default of its obligations under the Master Agreement and Participating Addendum:

- (i) The Contractor fails to deliver or has delivered nonconforming products, software, and/or services or fails to perform, to the Participating Entity's satisfaction, any material requirement of the Participating Addendum or is in violation of a material provision of the Participating Addendum, including, but without limitation, the express warranties made by the Contractor;
- (ii) The Participating Entity determines that satisfactory performance of the Participating Addendum is substantially endangered or that a default is likely to occur;
- (iii) The Contractor fails to make substantial and timely progress toward performance of the Participating Addendum;
- (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Participating Entity reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Participating Addendum;
- (vi) The Contractor has engaged in conduct that has or may expose the Participating Entity or the State to liability, as determined in the Participating Entity's sole discretion; or
- (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Participating Entity, the State, or a third party.

Participating Entity's Right to Terminate Upon Notice. Following thirty (30) days' written notice, the Participating Entity may terminate the Participating Addendum in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Termination under this provision shall not affect the rights and obligations regarding orders outstanding at the time of termination.

Termination Due to Change in Law. The Participating Entity shall have the right to terminate this Participating Addendum without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

- (i) The Participating Entity's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Participating Entity; and/or
- (ii) The Participating Entity's duties are substantially modified.

16) CONFIDENTIAL INFORMATION

Access to Confidential Data. No later than ten (10) days from the date this Participating Addendum is fully executed, Contractor shall comply with the following requirements:

- (i) The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard Confidential Information (as defined in the Master Agreement);
- (ii) Policies of confidentiality shall address Confidential Information conveyed in verbal, written, and electronic formats;
- (iii) The Contractor will designate one individual who will be the primary point of contact for the State with regard to State data used by the Contractor (if any) in connection with its contractual performance hereunder;
- (iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the confidentiality terms of the Master Agreement and Participating Addendum.

Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing Confidential Information, the Contractor shall promptly notify the State and reasonably cooperate with the State to protect the Confidential Information from disclosure.

Survives Termination. The Contractor's confidentiality obligations under the Master Agreement and this Participating Addendum shall survive termination of the Participating Addendum.

Private or confidential information provided by the State or an Authorized User to Contractor hereunder shall remain the property of the State or such Authorized User at all times.

17) INDEMNIFICATION

IN CONNECTION WITH INDEMNIFICATION OF AN AUTHORIZED USER WHEN A GEORGIA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE GEORGIA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF GEORGIA. THE ATTORNEY GENERAL OF GEORGIA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, CONTRACTOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF GEORGIA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF GEORGIA. IF THE ATTORNEY GENERAL OF GEORGIA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR CONTRACTOR, CONTRACTOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION.

18) WARRANTIES: Section 32 of Exhibit B (WSCA-NASPO TERMS AND CONDITIONS) to the Master Agreement is amended to include the following provisions:

- a. **Conformity with Contractual Requirements.** The Contractor warrants that Services will be performed in a professional and workmanlike manner, consistent with industry standards. If Contractor fails to meet the warranty and Authorized User notifies Contractor within 90 days of the date of performance, then Contractor will either re-perform the Services or return the price paid for them. The Contractor provides no other warranties or

conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose. This disclaimer will apply except to the extent not permitted by applicable law. Any documents containing terms and conditions that are in conflict with the terms and conditions of, or that contain terms and conditions beyond the scope of, this Participating Addendum and the Master Agreement are not binding on the parties.

- b. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Participating Addendum.
- c. **Use of State Vehicles.** Contractor agrees that no State vehicles will be used by Contractor for the performance of services under the Master Agreement and this Participating Addendum. Contractor shall be responsible for providing transportation necessary to perform all services.

19) PRODUCT RECALL

In the event that any of the products are found by the Contractor, the State, any governmental Entity, or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such products be reworked or recalled, the Contractor will promptly communicate all relevant facts to the Participating Entity and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Participating Entity from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and the State shall agree to the performance of such repairs by the State upon mutually acceptable terms.

20) PUBLIC RECORDS

The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law. Contractor agrees that this Contract, any related purchase orders, related invoices, and related pricing lists will be public documents, and may be available for distribution Contractor gives DOAS, the Authorized Users, and the State of Georgia express permission to make copies of this Contract, any related purchase orders, related invoices, and related pricing lists. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. DOAS, the Authorized Users, and/or the State Georgia will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, and related pricing lists.

21) STANDARD INSURANCE REQUIREMENTS

The Contractor shall procure and maintain, until all of its obligations have been discharged (including any warranty periods under the Participating Addendum have been satisfied), insurance which shall protect the Contractor and the State of Georgia from any claims for bodily injury, property damage, or personal injury covered by the indemnification obligations set forth in the Participating Addendum attached to this solicitation throughout the duration of the Participating Addendum. The Contractor shall maintain the insurance policies described below at the Contractor's own expense and shall furnish DOAS an insurance certificate or letter of self-insurance listing the State of Georgia as certificate holder. The insurance certificate or letter of self-insurance must document that the insurance coverage held by the Contractor includes contractual liability coverage applicable to the Participating Addendum.

The Contractor is required to maintain the following insurance coverage's during the term of the Participating Addendum:

- 1) Workers Compensation Insurance (Occurrence) in the amounts of the statutory limits established by the General Assembly of the State of Georgia (A self-insurer must submit a certificate from the Georgia Board of Workers Compensation stating that the Contractor qualifies to pay its own workers compensation claims.) In addition, the Contractor shall require all Sub-Contractors occupying the premises or performing work under the Master Agreement and Participating Addendum to obtain an insurance certificate showing proof of Workers Compensation Coverage with the following minimum coverage:

Bodily injury by accident - per employee	\$100,000;
Bodily injury by disease - per employee	\$100,000;
Bodily injury by disease – policy limit	\$500,000.
- 2) Commercial General Liability Policy with the following minimum coverage:
Policy shall include bodily, property damage and broad form contractual liability coverage.

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Ops. Aggregate Limit	\$2,000,000
- 3) Automobile Liability
Bodily Injury and Property Damage for any owned, hired or non-owned vehicles used in the performance of the Master Agreement and Participating Addendum

Combined Single Limit	\$1,000,000
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- 4) Errors and Omissions Limit \$2,000,000
- 5) Commercial Umbrella Limit \$2,000,000

Certificates of insurance or letters of self-insurance showing such coverage to be in force shall be filed with DOAS prior to commencement of any work under the Master Agreement and Participating Addendum and remain in effect for the duration of the Participating Addendum. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof. Contractor may, at its option, meet the requested insurance requirements via commercial insurance, self-insurance, alternative risk financing techniques, or a combination of these options.

Within (ten) 10 business days of an executed Participating Addendum, the Contractor must satisfy the required insurance obligations and provide DOAS with two (2) certificates of insurance or letters of self-insurance (as applicable). No contract performance shall occur unless and until the required insurance certificates or letters of self-insurance are provided.

22) INDIVIDUAL CUSTOMER

Each Authorized User that purchases products/services shall be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each Authorized User shall be responsible to follow the terms and conditions of the Master Agreement; and they shall have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Authorized User shall be responsible for their own charges, fees, and liabilities. Each Authorized User shall have the same rights to any indemnity as the Participating Agency and to

recover any costs allowed in the contract for their purchases. The Contractor shall apply the charges to each Authorized User individually.

23) ARBITRATION, INDEMNIFICATION, DAMAGES, WARRANTIES

Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State, Participating Entity, or Authorized Users have agreed to binding arbitration. Any term or condition that requires the parties to mediate or arbitrate is null and void. Voluntary dispute resolution procedures are valid to the extent allowed by law. Further the State of Georgia does not agree to pay attorney fees, costs, or late payment charges. Nothing herein, whether express or implied, shall be deemed to create an obligation on the part of the State, Participating Entity, or Authorized Users to indemnify, defend, hold harmless or release the Contractor, Contractor's sub-Contractors, or Contractor's agents. This shall extend to all agreements related to the subject matter of the Master Agreement and this Participating Addendum, and to all terms subsequently added, without regard to order of preference.

24) QUARTERLY BUSINESS REVIEW MEETINGS

The Contractor will participate in Quarterly Business Review ("QBR") meetings at DOAS' request. During the QBR meetings, the Contractor will present a written and oral status to DOAS regarding all work orders/purchase orders (including date and value). The QBR meeting will also focus on the status of service level agreements and key performance indicators agreed to by Contractor and DOAS. The QBR meeting may involve, but not be limited to, the following: review of the Contractor's performance and submitted reports, identification of areas of improvement to be addressed, review of the previous quarter's sales statistics, strategies to grow sales volume, development/monitoring of a Contractor service "scorecard."

25) VIRTUAL CATALOG

Team Georgia Marketplace™ Virtual Catalog

In June 2008, DOAS entered into a multi-year agreement with Jaggaer, Inc. whereby Jaggaer will provide certain electronic catalog hosting and management services to enable state customers to access a central online website to view and/or shop the goods and services available from existing Contractors as further described in that agreement. The central online website is referred to as Team Georgia Marketplace™ and the catalog site is referred to as the Virtual Catalog.

Contractor's Interface with the Virtual Catalog

To be eligible for contract award, the Contractor must agree to cooperate with DOAS and Jaggaer (and any authorized agent or successor entity to Jaggaer) in the event DOAS selects this contract to be exhibited on the Virtual Catalog. At a minimum, the Contractor agrees to the following:

1. Contractor agrees, upon DOAS' written request, to deliver within thirty (30) days' of such request either (1) a hosted catalog or (2) punch-out catalog. Contractor will cooperate with DOAS and Jaggaer to create a schedule to enable the integration of the Contractor's offering into the Virtual Catalog within this thirty (30) daytime period.
2. Contractor will join the Jaggaer Contractor Network (SQSN) and will have the option of using the Jaggaer's Contractor Portal to extract the Contractor's catalog and pricing, upload products, pricing and images into the Jaggaer system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery or through low-tech options such as e-mail and fax. More information about the SQSN can be found at: www.Jaggaer.com or call the Jaggaer Contractor Network Services team at 919-659-2152.
3. Contractor will support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by Jaggaer for the

Contractors and are upgraded every year. The State of Georgia reserves the right to migrate to future versions of the UNSPSC and the Contractor will be required to support the migration effort. All line items, goods or services provided under the Master Agreement and Participating Addendum must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity. More information about the UNSPSC is available at: <http://www.unspsc.org> and <http://www.unspsc.org/faqs#How>.

4. DOAS will decide which of the catalog structures (either hosted or punch-out as further described below) will be provided by the Contractor. Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through this Participating Addendum should not be viewable by Authorized Users).
 - a. Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its products/services and pricing in an electronic data file in a format acceptable to Jaggaer, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data from time to time to DOAS to maintain the most up-to-date version of their product/service offering in the Virtual Catalog.
 - b. Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the Virtual Catalog as follows: Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor ensures its online catalog marketplace is up to date by periodically updating the offered products/services and pricing listed on its online catalog. If awarded multiple contracts, Contractor agrees to maintain a single Punch-out site and be able to provide the appropriate contract id on each item returned to Jaggaer. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item.
5. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:
 - a. Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the Participating Addendum; and
 - b. The accuracy of the catalog must be maintained by Contractor throughout the duration of the Participating Addendum between the Contractor and DOAS; and
 - c. The catalog must include a State-specific contract identification number; and
 - d. The catalog must include detailed product line item descriptions; and
 - e. The catalog must include pictures when possible;* and
 - f. The catalog must include any additional DOAS content requirements. **
6. Revising Pricing and Product Offerings: Any revisions (whether an increase or decrease) to pricing or product/service offerings (new products, altered SKUs, etc.) must be pre-approved by DOAS and will be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no contract showcased in the Virtual Catalog may include price changes on a more frequent basis than once per quarter. The following conditions apply with respect to hosted catalogs:
 - a. Updated pricing files are required by the 1st of the month and will go into effect in the Virtual Catalog on the 1st day of the following month (i.e. file received on 12/01/13 would be effective in the Virtual Catalog on 01/01/14). Files received after the 1st of the month may be delayed up to a month (i.e. file received on 11/06/13 would be effect in the Virtual Catalog on 1/01/14).

- b. DOAS-approved price changes are not effective until implemented within the Virtual Catalog. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in the Virtual Catalog.
- 7. Contractor must be able to accept Purchase Orders via fax, e-mail, cXML or EDI INT AS 12.
 - a. For Purchase Orders received via email, the Contractor must provide a dedicated email address (i.e. orders@company.com) that is monitored during normal business hours.
 - b. The Contractor is required to provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.
- 8. All purchase orders issued by Participating Entities within Georgia **shall** include the following:
 - a. NASPO ValuePoint Master Agreement number MNWNC-119
 - b. State Contract Number: 99999-SPD-T20190904-0001
 - c. Participating Entity Name, Address, Contact, and Phone-Number
 - d. Applicable approvals
 - e. Orders shall be made out to the Contractor or Reseller

The Authorized User shall not be required, by the Contractor or its sub-Contractors, to sign any additional terms and conditions when utilizing this Agreement.

- 9. Contractor agrees that DOAS controls which contracts appear on the Virtual Catalog and that DOAS may elect at any time to remove any Contractor's offering from the Virtual Catalog.

*Details regarding the submission of image files and catalog content will be discussed during the enablement process; however, the following represents key information regarding the submission of product image files:

- o Provide URL links to the product images (preferred method) or actual image files (in gif, jpeg and other commonly used formats) for all of the items in the Contractor's catalog that will be hosted by the Virtual Catalog. These images are displayed to the customer directly in search results as well as in the product details window.
- o Provide the actual image files in a 'zip archive'. Please go to www.winzip.com to download the WinZip® application that is needed to create such an archive as well as additional details about using WinZip® application.
- o Provide only one image per product.
- o Color pictures are preferred; however, black and white pictures or drawings are acceptable if this is the current standard for the Contractor's business marketing.
- o Please note the Virtual Catalog prefers jpg format for image files (280X280 pixels) although images in many other formats are accepted.
 - When an image is in jpg format, it is resized to 280X280 pixels, if necessary, to maintain a consistent appearance for the Virtual Catalog.
 - When an image is in a format other than jpg, it will be converted to jpg and resized to 280X280 pixels to maintain a consistent appearance for the Virtual Catalog.
- o As products change, updated image files must be submitted to update the Virtual Catalog.
- o Provide a corporate logo image in the following sizes. Logo will be used for display on the Contractor/Contract profile.
 - o 30 pixels (H) x 70 pixels (W)
 - o 50 pixels (H) x 115 pixels (W)

- o 300 pixels (H) x 200 pixels (W)

In rare instances where an image is not available, Jaggaer and DOAS will work with the Contractor to determine the best solution for advertising the Contractor's offering.

** Existing Contractors in the SQSN normally host one (1) general product catalog that is made available for all customers. This avoids duplication of effort for the Contractor and brings improvements to the catalog to all customers at once. It is rare that individual customers have needs that are not also required by others. Jaggaer does not prohibit 'private' catalogs, but recommends review of requirements with the Contractor enablement consultants and the Contractors in question first. Although Contractors in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different Georgia agencies. For example, a Contractor may have different pricing for state government agencies and Board of Regents institutions. Contractors have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the person viewing the catalog.

In the event DOAS selects this contract to be included on the Virtual Catalog, Jaggaer's technical documentation will be provided to the Contractor after (1) the Contractor has been formally invited by DOAS to join the Virtual Catalog and (2) the Contractor has joined the Jaggaer Contractor Network and signed up for Jaggaer's Contractor Portal. These services will be provided by Jaggaer at no additional cost to the Contractor. Contractor agrees that Contractor's Participating Addendum pricing includes any and all costs to the Contractor in complying with these provisions.

The Board of Regents and select colleges currently maintain separate instances of certain contracts through Jaggaer. In the event Board of Regents or one or more colleges elects to publish the resulting contract in the board/college's Jaggaer catalog, the Contractor agrees to work in good faith with the board/college to implement the catalog. DOAS does not anticipate that this will require additional efforts by the Contractor; however, the Contractor agrees to take commercially reasonable efforts to enable such separate Jaggaer catalogs or related integrations (i.e., electronic order submission, e-invoicing, etc.). Contractors are welcome to submit questions regarding this requirement during the Q&A period and/or during the Bidders'/Offerors' Conference.

26) COMPLIANCE WITH THE LAW

The Contractor, its employees, agents, and sub-Contractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as sub-Contractors or Contractors. The Contractor, its employees, agents and sub-Contractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. When performing services or carrying out activities contemplated by this Participating Addendum on DOAS or Authorized User property, Contractor and Contractor's personnel shall also comply with all State and State Entity policies and standards in effect during the performance of the Contract, including but not limited to the State Entity's policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract, including any renewals or extensions thereof, not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Contract. Further, Contractor represents that Contractor complies with and will continue to comply with O.C.G.A. § 21-5-76.

27) CERTIFICATION REGARDING SALES AND USE TAX

By executing the Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the DOAS or its representative filing for damages for breach of contract.

28) SCRUTINIZED COMPANY LIST

In executing this Participating Addendum, Contractor that currently and/or previously, within the last three years, has had business activities or other operations outside of the United States, must certify that it is not a "scrutinized company". A scrutinized company is a company conducting business operations in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company which can demonstrate any of the following exceptions noted in O.C.G.A. Section 50-5-84. False certification hereunder may result in civil penalties, contract termination, ineligibility to bid on state contractors for three or more years, and/or any other available remedy. If the Contractor is a scrutinized company, the Contractor shall not be eligible to execute a Contract with the Participating Entity unless DOAS makes a determination in accordance with O.C.G.A. Section 50-5-84 that it is in the best interests of the State.

29) DRUG-FREE WORKPLACE

The Contractor hereby certifies as follows:

- (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and
- (ii) If Contractor has more than one employee, including, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
- (iii) Contractor will secure from any sub-Contractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Sub-Contractor's Name) certifies to the Contractor that a drug-free workplace will be provided for the sub-Contractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Contractor may be suspended, terminated, or debarred if it is determined that:

- (i) Contractor has made false certification here in above; or
- (ii) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

30) THIRD PARTY BENEFICIARIES.

There are no third-party beneficiaries to the Participating Addendum. The Participating Addendum is intended only to benefit the Participating Entity, the Authorized Users, and the Contractor.

31) CHOICE OF LAW AND FORUM.

The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Participating Addendum without regard to the choice of law provisions of State law. In the event, any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Participating Addendum, such proceeding shall solely be brought in a court or other forum of competent

jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State, Participating Entity, or Authorized User.

Contract Vendor may only assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities to an "Affiliate" (any legal entity that Contract Vendor owns, that owns Contract Vendor, or that is under common ownership with Contract Vendor). Contract Vendor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Participating Addendum, in whole or in part, to a Non-Affiliate without the prior written approval of the Participating Entity. Such written approval shall not be unreasonably withheld, conditioned, or delayed and the Participating Entity shall use his or her best efforts to provide such consent no more than fifteen (15) days from the date of Contract Vendor's request. Any assignment by Contract Vendor pursuant to this provision will not relieve Contract Vendor of its obligations under this Master Agreement.

Contract Vendor may not assign this Participating Addendum, in whole or in part to an assignee that has been debarred by federal or state agencies, or where Participating Entity is restricted from accepting the assignment based on Participating Entity's governing state laws.

32) USE OF THIRD PARTIES.

Except as may be expressly agreed to in writing by the Participating Entity, Contractor shall not subcontract, or otherwise permit anyone other than Contractor or Contractor's personnel (or Contractor's Affiliates) to perform any of Contractor's obligations under this Participating Addendum or any of the work subsequently assigned under this Participating Addendum. The Participating Entity's designated contract administrator shall have the right to approve the addition of any new subcontractors. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Participating Addendum shall in any way relieve Contractor of any responsibility, obligation or liability under this Participating Addendum and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Participating Addendum shall also apply to the subcontractors. The Participating Entity shall have the right to request the removal of a subcontractor for good cause

33) INTEGRATION.

The Participating Addendum, Master Agreement and its incorporated documents represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Participating Addendum.

34) HEADINGS OR CAPTIONS.

The paragraph headings or captions used in the Participating Addendum are for identification purposes only and do not limit or construe the contents of the paragraphs.

35) NOT A JOINT VENTURE.

Nothing in the Participating Addendum or Master Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for products, software and services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and

payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Participating Addendum.

36) SUPERSEDES FORMER CONTRACTS OR AGREEMENTS.

Unless otherwise specified in the Participating Addendum, this Participating Addendum supersedes all prior contracts or agreements between the Participating Entity and the Contractor for the products, software and services provided pursuant to the Participating Addendum.

37) WAIVER.

Except as specifically provided for in a waiver signed by duly authorized representatives of the Participating Entity and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Participating Addendum shall not be construed as affecting any subsequent right to require performance or to claim a breach.

38) NOTICE.

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Participating Addendum on behalf of the party at the address identified in the Participating Addendum Form. Each such notice shall be deemed to have been provided:

- (i) At the time it is actually received; or,
- (ii) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- (iii) Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

39) CUMULATIVE RIGHTS.

The various rights, powers, options, elections and remedies of any party provided in the Participating Addendum shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

40) SEVERABILITY.

If any provision of the Participating Addendum is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Participating Addendum. Further, if any provision of the Participating Addendum is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Participating Entity and the Contractor to amend, modify, eliminate, or otherwise change any part of this Participating Addendum shall not affect any other part of this Participating Addendum, and the remainder of this Participating Addendum shall continue to be of full force and effect.

41) TIME IS OF ESSENCE.

Time is of the essence with respect to the performance of the terms of the Master Agreement and Participating Addendum. Contractor shall ensure that all personnel providing products, software and services to the State are responsive to the State's requirements and requests in all respects.

42) AUTHORIZATION.

The persons signing this Participating Addendum represent and warrant to the other parties that:

- (i) It has the right, power and authority to enter into and perform its obligations under the Participating Addendum; and

It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Participating Addendum and the Participating Addendum constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

43) SUCCESSORS IN INTEREST.

All the terms, provisions, and conditions of the Participating Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

44) RECORD RETENTION AND ACCESS.

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Participating Addendum for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The Contractor should maintain separate accounts and records for the Participating Entity and the Authorized Users. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Participating Addendum, during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Evidence of criminal conduct will be turned over to the proper authorities.

45) PUBLIC RECORDS.

The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.

46) CLEAN AIR AND WATER CERTIFICATION.

Contractor certifies that none of the facilities it uses to produce products provided under the Participating Addendum are on the Environmental Protection Participating Entity (EPA) List of Violating Facilities. Contractor will immediately notify the Participating Entity of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

47) DEBARRED, SUSPENDED, AND INELIGIBLE STATUS.

Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any Participating Entity of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the Participating Entity if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

48) USE OF NAME OR INTELLECTUAL PROPERTY.

Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.

49) TAXES.

Authorized Users are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. Authorized Users are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Participating Entity with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Participating Addendum, which verification is incorporated herein by reference.

50) CERTIFICATION REGARDING SALES AND USE TAX.

By executing the Participating Addendum the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Participating Addendum void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Participating Entity or its representative filing for damages for breach of contract.

51) DELAY OR IMPOSSIBILITY OF PERFORMANCE.

Neither party shall be in default under the Participating Addendum if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Participating Addendum.

52) OBLIGATIONS BEYOND CONTRACT TERM.

The Participating Addendum shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Participating Addendum. Any applicable manufacturer's warranty or additional warranty purchased by the State or an Authorized User under the Participating Addendum as of the date of expiration, termination or cancellation of the Participating Addendum will survive such termination, expiration or conclusion of the Participating Addendum.

53) COUNTERPARTS.

The Participating Entity and the Contractor agree that the Participating Addendum has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

54) FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS.

The Participating Entity and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Participating Addendum.

55) TRANSITION COOPERATION AND COOPERATION WITH OTHER CONTRACTORS.

Contractor agrees that upon termination of this Participating Addendum for any reason, it shall provide reasonable efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. Further, in the event that the State has entered into or enters into agreements with other contractors for additional work related to services rendered under the Master Agreement and Participating Addendum, Contractor agrees to cooperate reasonably with such other contractors.

56) AMENDMENT.

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

57) AGREEMENT.

This Participating Addendum and the Master Agreement together with its exhibits and/or amendments, 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 Master Agreement, together with its exhibits and/or amendment shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise (except as required by Authorized Users in order to utilize specific funds for a procurement), and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.

By signing below, Contractor agrees to offer the same services as on the Minnesota WSCA-NASPO Master Agreement Number: MNWNC-119, at prices equal to or lower than the prices on the contract.

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

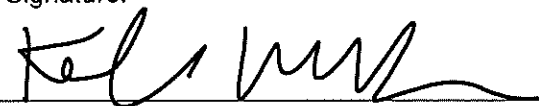
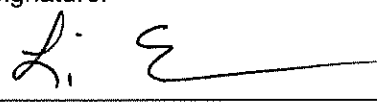
Contractor: Microsoft Corporation	Participating Entity: Georgia Department of Administrative Services
Signature: 	Signature: 
Name: Kalin McKenna	Name: Lisa Eason
Title: Director US M&O	Title: Deputy Commissioner, State Purchasing Division
Date: 8/22/19	Date: 9-4-19

EXHIBIT A

Contracting with the Georgia Department of Administrative Services Memorandum

Please be advised that the Georgia Department of Administrative Services (the "Department"), as a state agency, is unable to agree to certain revisions to the standard state contract. Revisions that would provide an unfair competitive advantage, including but not limited to those that materially change the terms or the requirements of the solicitation, will be rejected by the State. Please note that this guidance is not all-inclusive, and the Department reserves the right to negotiate all terms and conditions. If a supplier and the Department are unable to come to mutually agreeable terms, the supplier will not be awarded a contract. The following provisions are also applicable to State offices, agencies, departments boards, bureaus, commissions, institutions, agencies, boards, commissions, and other entities of the state procuring goods and/or services pursuant to O.C.G.A. § 50-5-50 et. seq.

1. Indemnification and/or hold harmless

Any provision that requires the Department to pay all losses another party may incur. State agencies are prohibited from agreeing to indemnify third parties. Indemnification provisions have been determined to violate the prohibition against pledges of the State's credit and the prohibition against gratuities by the State (Ga. Const. Art. VII, Sec. IV, Par. VIII; Ga. Const. Art. III, Sec. VI, Par. VI; 1980 Op. Att'y Gen. 80-67; 1974 Op. Att'y Gen. 74-115. Indemnification provisions have also been determined to be invalid as unauthorized attempts to contractually waive the State's sovereign immunity. 1980 Op. Att'y Gen. 80-67.

The first constitutional provision provides that the credit of the State shall not be pledged or loaned to any individual, company or association. Debt as used in the constitution is defined in terms of an annual budget cycle that relies on annual appropriations of the legislature. Under this definition, a "pledge" would include agreeing to obligations of funds beyond the current fiscal year. The second constitutional provision relates to the "gratuities clause" which prohibits state entities from granting any donation or gratuity (gift) to a third party or forgiving any debt or obligation owed to the public. The gratuities clause essentially requires that the state entity receive a substantial benefit for the grant or use of its assets (whether using property or personnel). Finally, by virtue of the doctrine of sovereign immunity, suit may not be maintained in the courts against a state entity without the express consent of the State.

2. Patent and Copyright Indemnification

The Attorney General has taken the position that it is the sole legal advisor for the state and state entities may not agree to be represented by third parties, even when the matter involves the third party defending its patent rights.

3. Warranty/Guarantee.

Any provision that requires the Department to unconditionally assure or promise a certain result or outcome. The Attorney General has advised that warranty provisions requiring State agencies to provide a warranty violate the prohibition against pledges of the State's credit and the prohibition against gratuities by the State. The reason is that resources may have to be expended to satisfy such warranty or guarantee.

4. Governing law of or venue in any state other than Georgia.

Contracts with state entities must be governed by the laws of the State of Georgia. State law provides that the Attorney General has exclusive authority and control over all matters of litigation or potential litigation involving State agencies. As a result, venue for any action or dispute arising in contract shall be proper is Superior Court Fulton County, Georgia. O.C.G.A. § 50-21-1(b). Furthermore, any contract with State entities shall be construed in accordance with the laws of the State of Georgia, without giving effect to the conflicts of law provisions.

5. Requirements that the Department pay taxes, interest, liquidated damages, penalty fees or cancellation charges, litigation costs, or attorney's fees.

- **ATTORNEY'S FEES/COSTS.** The Department will not agree to pay attorney's fees or costs. The rationale is that such a payment would be a violation of the constitutional gratuities clause.
- **DAMAGES.** The inclusion of indirect or incidental as types of damages payable by the Department is not acceptable. The UCC regards these as distinguishable from consequential damages because they are usually meant to include out of pocket expenses directly attributable to the breach (i.e., travel expenses).
- **INTEREST.** The Department will not agree to pay interest. The Attorney General has advised the Department that payment of interest would be prohibited by the gratuities clause of the constitution and that the Department lacks statutory authority to agree to the payment of interest. Atty. Gen. Position Paper dated August 8, 1978; *Bently v. State Board of Examiners*, 152 Ga. 836 (1922).
- **LATE PAYMENT/CANCELLATION CHARGES.** The Department does not agree to pay late payment charges. This policy stems from an opinion of the Attorney General that late payment charges are in the nature of penalty/gratuity which the State is constitutionally prohibited from paying.
- **TAXES.** The State is exempt from most taxes and generally will not agree to contract language which requires the payment of taxes. The Department will not agree to reimburse the supplier for the payment of taxes. However, the Department will agree to language that states "the Department will pay taxes lawfully imposed upon it".

6. Binding arbitration

The Department will not agree to binding arbitration. Based on the State's sovereign immunity and the Attorney General's authority over civil litigation, the Department is not authorized to agree to binding arbitration. The Attorney General has exclusive authority and control over all matters of litigation or potential litigation involving State agencies, and neither the 1983 Georgia Constitution nor any Act of the General Assembly authorizes the Department to limit the type or scope of judicial action, or the result obtainable therefrom by the State. Provisions which effectively waive the right of the Attorney General to bring actions on behalf of the State are prohibited.

7. Any provision requiring the Department to be bound by terms and conditions that are unknown at the time of signing the agreement.

Unknown obligations may violate various laws such as the prohibition against pledges of the State's credit and the prohibition against gratuities by the State. As a practical matter, entering into contracts that call for an unspecified sum of money to change hands make it extremely difficult to budget. Such provisions in a contract would be void as a matter of law, and should be avoided at the time the contract is entered.

8. Best efforts provisions that require the expenditure of any funds or efforts necessary to meet the obligations of a contract, even if such efforts exceed the dollar amount of the contract.

Best efforts provisions have been held to be warranties and/or guarantees. Such provisions violate the prohibition against pledging the State's credit. (Refer to discussion of warranties above for more information).

9. Contractual provisions that require the Department to waive potential claims against a third party or otherwise limit the liability of such party

The Department does not have the authority to prejudice the rights of the State to sue or otherwise enforce a contract by agreeing to a limit on or a waiver of liability. (Refer to discussion of arbitration, above, for more information).

10. Contractual provisions which require the Department to accept the risk of loss of items or goods during delivery.

As a rule, the Department does not accept risk of loss until receipt of the items or goods.

11. If the agreement is a result of an RFQ or an RFP, the Department does not allow vendors to disclaim warranties.

The rationale is that a purchase resulting from a competitive process should provide for specific products or services to be provided to the Department to fit a particular need/purpose. To allow a supplier to disclaim a warranty of fitness in such a case would defeat the competitive process.

12. Contractual clauses that require the Department to purchase insurance policies or provide coverage for third parties.

State law provides for the Department of Administrative Services to procure insurance for State entities. The Department is covered by the Tort Claims Act and the State of Georgia Broad Form Insurance that is administered by the Department of Administrative Services.

13. No Automatic renewals for agreements obligating state appropriated funds.

Contracts may not allow for automatic renewals when state funds are/would be obligated in subsequent fiscal years. 1974 Atty. Gen. Op. 74-115. Contracts may be renewed at the sole discretion of the Department. The Attorney General has taken the position that a contract may be renewed prior to the end of the fiscal year if all of the funds are available and are unencumbered during that same fiscal year. 1980 Atty. Gen. Op. 80-163.

14. Multiyear Contracts:

Pursuant to O.C.G.A. 50-5-64, Multiyear agreements must meet the following requirements:

(1) The contract shall terminate absolutely and without further obligation on the part of the user agency or the Department at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed as provided in this Code section;

- (2) The contract may be renewed only by a positive action taken by the user agency or by the Department on behalf of the user agency, and the nature of such action shall be determined by the department and specified in its standard contract;
- (3) The contract shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the user agency under the contract. The determination of the occurrence of such unavailability of funds shall be made by the user agency in its sole discretion and shall be conclusive;
- (4) The contract shall state the total obligation of the user agency for the fiscal year of execution and shall further state the total obligation which will be incurred in each fiscal year renewal term, if renewed; and
- (5) The contract shall provide that title to any supplies, materials, or equipment shall remain in the vendor until fully paid for by the user agency.

15. No upfront payments for goods/services

The Department is not authorized to make payment prior to receipt of goods/services. (Pursuant to the State of Georgia Accounting Procedures Manual, payables for normal operating expenditures should be recognized when the goods and services have been received. Accounting Manual Reference: Section: Vendor Management; Subsection: Payment Method).

16. Drug Free Workplace

Pursuant to O.C.G.A. § 50-24-3 and § 50-24-4, the Department must include specific certifications regarding the provision of a drug free workplace and prohibition against engaging in certain activities relating to unlawful drug-related activities. This language is non-negotiable.

17. Confidentiality

Any confidentiality provisions in a contract must be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., as the Department is a public agency of the State of Georgia. Additionally, the Department generally considers pricing information to be subject to public disclosure. See State Rd. & Tollway Auth. V. Elec. Transaction Consultants Corp., 306 Ga. App. 487 (2010).

18. No Boycott of Israel

Pursuant to O.C.G.A. §50-5-85, the state shall not enter into a contract with a total value of \$1,000 or greater with an individual or company if the contract is related to construction or the provision of services, supplies, or information technology unless the contract includes a written certification that such individual or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

19. Joint Ownership of Intellectual Property

The State is constitutionally prohibited from becoming a joint owner or stockholder in or with any individual, company, association, or corporation. Therefore, the Department is prohibited from agreeing to joint ownership of intellectual property. (Ga. Const. Art. VII § IV, Para. VIII).

20. Contract clauses that impose obligations on the Department by reference

The Department will not agree to contract provisions that incorporate additional obligations by reference, including but not limited to, references to policies located at a specific web address. Any and all terms of the contract which are modified or amended shall be binding upon either Party so long as such changes are agreed to in writing by the Parties and executed by the designated individuals authorized to amend or modify the contract.

21. E-Verify

Pursuant to O.C.G.A. § 13-10-91, a public employer shall not enter into a contract for the performance of services unless the contractor registers and participates in the federal work authorization program. If a supplier is providing services under a contract with a total compensation amount of \$2,500 or greater, (even if such services will be performed outside of the State of Georgia), DOAS requires a notarized affidavit from the supplier attesting to the following:

(A) The affiant has registered with, is authorized to use, and uses the federal work authorization program;

(B) The user identification number and date of authorization for the affiant;

(C) The affiant will continue to use the federal work authorization program throughout the contract period; and

(D) The affiant will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required by subparagraphs (A), (B), and (C) of this paragraph.

Additional information regarding the State's E-Verify requirements can be found at:

<http://www.audits.ga.gov/NALGAD/IllegalImmigrationReformandEnforcementAct.html>