

PARTICIPATING ADDENDUM
60-000-15-00008AJ
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")

MASTER AGREEMENT
Master Agreement No: MNWNC-110
Firefly
(hereinafter "Contractor")
And
State of New Mexico
(hereinafter "Participating State/Entity")

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1. **Scope:** This Participating Addendum allows for purchase of the following **Computer Equipment, Peripherals and Related Services** led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state /entity contracts, and which receives prior written approval of the state's chief procurement official.

Bands awarded:

Band 4

The original solicitation included Band 6: Ruggedized. This band has been removed and ruggedized equipment will be allowed in Bands 1 -5. The original solicitation, responses and amendments may be found on the NASPO ValuePoint website.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **New Mexico's** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Terms:** This Participating Addendum will be effective July 1, 2015 and continue through March 31, 2017, unless extended, renewed or terminated earlier.
4. **Configuration Limits:** The dollar limits identified below are based on a **SINGLE** computer configuration. This is **NOT** a restriction on the purchase of multiple configurations (e.g. an entity could purchase 10 laptops @ \$10,000 for a total purchase price of \$100,000).

ITEM	CONFIGURATION*
Server	\$500,000
Storage	\$500,000
Desktops	\$ 10,000
Laptops	\$ 10,000
Tablets	\$ 5,000
Peripherals	\$ 5,000
Services	restrictions listed below

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* Configuration is defined as the combination of hardware and software components that make up the total functioning system. Software purchases are considered a part of the configuration limit of the equipment.

5. **Software Licensing:**

Stated licensing agreements must be provided upon request.

6. **Lease Agreements:**

Leasing is not authorized under this addendum.

7. **Restrictions:** Services listed below will not be allowed by the use of this Participating Addendum.

7.1. **Software**

- 7.1.1. Purchases exclusively for software will not be allowed.
- 7.1.2. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
- 7.1.3. Software is an option which must be related to the procurement of equipment.
- 7.1.4. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment.
- 7.1.5. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (band 4&5) purchased, is allowed and may be procured after the initial purchase of equipment.

7.2. **Services**

- 7.2.1. Purchases exclusively for Professional Services will not be allowed.
- 7.2.2. Services must be related to the procurement of equipment.
- 7.2.3. No additional professional services such as consulting regardless of length of engagement are allowed.
- 7.2.4. Wireless phone and internet service is not allowed.
- 7.2.5. Cellular equipment and accessories are not allowed.
- 7.2.6. Managed Print Services is not allowed.
- 7.2.7. Hosting Services are not allowed.
- 7.2.8. Cloud Services including acquisitions structured as managed on-site services are not allowed.
- 7.2.9. Managed Print Services are not allowed.
- 7.2.10. Training other than equipment operation training is not allowed.

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7.3. Third Party Products

- 7.3.1. Contract Vendors can only offer Third Party Products in the bands they have been awarded.
- 7.3.2. Contract Vendor cannot offer products manufactured by another Contract Vendor holding a Minnesota NASPO ValuePoint Master Agreement unless approved by the Lead State.

7.4. Additional Product/Services

- 7.4.1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.
- 7.4.2. Lease/Rentals of equipment may be allowed and will be addressed by each State.
- 7.4.3. Cellular Phone Equipment is not allowed.
- 7.4.4. EPEAT Bronze requirement may be waived, on a State case by case basis, if approved by the State's Chief Procurement Officer

7.5. Warranty And Maintenance

- 7.5.1. The Contract Vendor shall ensure warranty service and maintenance for all equipment, including third party products provided.

8. Order of Precedence:

- 8.1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement
- 8.2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
- 8.3. The Solicitation including all Addendums; and
- 8.4. Accepted portions of Contract Vendor's response to the Solicitation, as modified in any proposal revisions (if permitted)

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an conditions listed in

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the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

9. Participating State Modifications or Additions to Master Agreement:

9.1. Employee Pay Equity Reporting

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor

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requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

9.2. Indemnification

- a. The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").
 - (1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
 - (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - (b) specified by the Contractor to work with the Product; or
 - (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - (d) It would be reasonably expected to use the Product in combination with such product, system or method.

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(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

9.3. Insurance

- a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
 - (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal industry (including death), advertising liability, and property damage,

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- with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- (2) Consignment Coverage at an amount commensurate with the value of the Participating Entity's property in the care, custody or control of the Contractor. Such coverage will be required only for Tier 2 and Tier 3 activity.
- (3) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- c. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.
- d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.
- e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company

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(authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

- f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

9.4. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

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

Contractor: Firefly

Name	Brian Dimitroff
Address	4463 White Bear Parkway, Ste. 102, St. Paul, MN 55110
Telephone	(612) 326-1396
Fax	
E-mail	brian@fireflycomputers.com

Participating Entity

Name	Teri Arevalo
Address	Joseph Montoya Building, 1100 St. Francis Drive, Room 2016, Santa Fe, NM 87505

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Telephone	(505) 872-0266
Fax	(505) 827-2484
E-mail	teri.arevalo@state.nm.us

11. **Partner Utilization:** The Contractor may utilize partners. However, any contractual agreement that may result from this Participating Addendum shall specify that the prime Contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State.

Additionally, the Contractor must receive approval, in writing, from New Mexico's State Purchasing Agent/Chief Procurement Official, before any partner is used during the term of this agreement.

12. **Orders:** Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

13. **New Mexico Administration Reporting and Fees**

The Contractor agrees to provide a utilization report on all sales and/or services and other revenues (including commissions charged) and fees to the agreement administrator in accordance with the following schedule:

Quarter	Period End	Report Date
First	July 1 – September 30	October 31
Second	October 1 – December 31	January 31
Third	January 1 – March 31	April 30
Fourth	April 1 – June 30	July 31

The periodic report shall include the gross total sales and other revenues (including commissions charged) for the period subtotaled by procuring agency or local public body name. Please note that the SPD is interested in the distinction between sales to state agencies and those to local public bodies (such as cities and counties) to evaluate to whom SPD contracts are most beneficial. Such information will aid in strategically sourcing future procurements to ensure SPD is meeting the needs of its customers.



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The reports shall be accompanied with a check payable to the State Purchasing Division for an amount equal to one percent (1.00%) of the total sales and other revenues derived from New Mexico state agencies and local public bodies (including commissions charged) for the period. This fee is in addition to the fee specified in the NASPO ValuePoint Master Agreement Terms and Conditions that is based on all sales under the Master Agreement.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of this Agreement or termination of this Agreement for cause.

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

Participating State: State of New Mexico	Contractor: FireFly Computers, LLC.
By: 	By: 
Name: Lawrence Maxwell	Name: Kari Phillips
Title: State Purchasing Agent/Chief Procurement Official	Title: Chief Executive Officer
Date:	Date: 9.2.2015

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org