

STATE OF VERMONT PARTICIPATING ADDENDUM # 43621
FOR NASPO VALUEPOINT PURCHASING PROGRAM: MAILING EQUIPMENT, SUPPLIES AND
MAINTENANCE (2022-2027)
Led by the State of ARIZONA
Master Agreement #CTR058805

Contractor: DMT Solutions Global Corporation DBA BlueCrest

Contractor's NASPO ValuePoint Webpage: <https://www.naspovaluepoint.org/portfolio/mailing-equipment-supplies-and-maintenance-2022-2027/bluecrest/>

1. **Parties.** This Participating Addendum is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and the Contractor identified above. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Participating Addendum authorizes the purchase of Mailing Equipment, Supplies and Maintenance (2022-2027) from the Contractor pursuant to the Master Agreement identified above, which is hereby incorporated by reference.
3. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.
4. **Purchasing Entities.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an "Additional Purchaser"). Issues concerning interpretation and eligibility for participation are solely within the authority of the State of Vermont State Contract Administrator. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations and negotiate supplemental terms necessary to comply with such Additional Purchaser's requirements.
5. **Contract Term.** The period of Contractor's performance shall begin on March 1, 2023 end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement. An amendment to this Participating Addendum shall not be necessary in the event of the renewal or extension of the Master Agreement.
6. **Available Products and Services.** All products, services and accessories listed on the Contractor's NASPO ValuePoint Webpage may be purchased under this Participating Addendum.
7. **No Lease Agreements.** Contractor is prohibited from leasing to State Purchasers under this Participating Addendum. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements with Contractor if the terms of the Master Agreement permit leasing.
8. **Software.**
 - a. The Parties acknowledge and agree that while software subscription terms may be presented for review at the time of an order, as applicable to the order, any such software subscription terms or conditions not allowable under law or that materially conflict with

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the applicable terms and conditions established by this Participating Addendum and Master Agreement will not apply. Further, and without limiting the generality of the foregoing sentence, notwithstanding any language to the contrary, Contractor acknowledges and agrees that Purchasing Entities do not intend to be bound, and will not be bound, by any software subscription terms applicable to any order to the extent such terms: (a) require indemnification by the Purchasing Entity of the Contractor or a third party; (b) waive the Purchasing Entity's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of Purchasing Entity's sovereign status or under the Eleventh Amendment to the United States Constitution; (f) establish new or different payment obligations of the Purchasing Entity than are established under the Agreement; (g) reduce or diminish the obligations regarding the security, confidentiality, and integrity of the Purchasing Entity's data as are established under the Agreement; (h) establish rights in the use of or access to Purchasing Entity's data for any reason other than performance of the product or service; (i) establish rights of ownership in the Purchasing Entity's data; or (j) limit the time within which an action may be brought.

- b. The following only applies to State Users. All software Purchases require the prior approval of the Agency of Digital Services before any order may be placed. Users when making the request must include the contractor provided terms and conditions with a quote.

9. Contractor's Representations and Warranties.

- a. General Representations and Warranties. The Contractor represents, warrants and covenants that:
 - i. The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Participating Addendum and the execution, delivery and performance of this Participating Addendum by the Contractor has been duly authorized by the Contractor.
 - ii. There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Participating Addendum.
 - iii. The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Participating Addendum.
 - iv. The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Participating Addendum; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms

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and protocols, that Contractor incorporates into its product; and (c) as of the date of this Participating Addendum, Contractor is not aware of any claim alleging that the services or other materials or technology to be provided by the Contractor to the State infringe upon or misappropriate the intellectual property rights of any third party.

- v. The Contractor has adequate resources to fulfill its obligations under this Participating Addendum.
 - vi. Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.
- b. Contractor's Performance Warranties. Contractor represents and warrants to the State that:
- i. Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
 - ii. Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have, as of the date of delivery, any type of malicious software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that malicious code may be present in any software as delivered hereunder and provides reasonable evidence to BlueCrest as to such fact, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
 - iii. To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

10. Remedies For Default.

In the event either party is in default under this Participating Addendum, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Participating Addendum, including termination for cause, and at law or in equity.

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11. Reserved.

12. *Professional Liability and Cyber Liability Insurance Coverage.*

Before commencing work on this Participating Addendum and throughout the term of this Participating Addendum, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Participating Addendum with minimum third party coverage of \$1,000,000.00 per claim, \$1,000,000.00 aggregate; and (b) first party Breach Notification Coverage of not less than \$1,000,000.00. Before commencing work on this Participating Addendum the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

13. *Requirements for Ordering.*

- a. Orders made under this Participating Addendum must include a Purchase Order for the Product and/or Services. Orders funded by federal funds may include additional terms as necessary to comply with federal requirements.
- b. State Purchasers must follow the ordering procedures of the State Contract Administrator to execute orders against this Participating Addendum, which shall include, as applicable, obtaining approval from the State CIO and/or Attorney General's Office prior to making purchases under this Participating Addendum.
- c. All orders placed under this Participating Addendum must include the Participating Addendum Number on the Purchase Order.

14. *Payment Provisions and Invoicing.*

- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price Schedule maintained on-line at Contractor's NASPO ValuePoint Webpage listed above.
- b. Purchasing Entities may solicit the Contractor for deeper discounts than the contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. Payment terms are Net 30 days from the date the Purchasing Entity receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.
- e. Invoices shall be sent to the address identified on the Purchasing Entity's Purchase Order and shall specify the address to which payments will be sent. The State of Vermont Participating Addendum Number and Purchasing Entity's Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.

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- f. Reimbursement of expenses is not authorized. All rates set forth in a Purchase Order shall be inclusive of any and all Contractor fees and expenses.
- g. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.
15. **Reporting.** Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.
- a. The reports shall be in the form of an Excel spreadsheet transmitted electronically to SOV.ThePathForward@vermont.gov.
- b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.
16. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.
17. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
18. **Termination.** This Participating Addendum may be terminated by the State at any time upon 30 days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any order executed prior to the effective date of termination or other expiration of this Participating Addendum.
19. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:

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a. ***For the Contractor:***

Name: BlueCrest, Dawn Marie Ehlers
Title: Services Contract Manager
Phone: 301/471-4917
Email: dawn.ehlers@bluecrestinc.com

b. ***For the State:***

Name: Roland Ortiz
Phone: 802/371-8987
Email: roland.ortiz@vermont.gov

20. Additional Terms and Conditions.

- a. Notwithstanding any contrary language anywhere, in no event shall the terms of this contract or any document furnished by Contractor in connection with performance under this contract obligate the State to (1) defend or indemnify Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of Contractor or any third party. Any such terms shall have no effect in any event.
- b. If required by an order made by a State Purchaser under this Participating Addendum, the Contractor and the State Purchaser shall negotiate in good faith the then applicable State of Vermont form of Business Associate Agreement. This provision shall not apply to Additional Purchasers.
- c. Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy.
- d. **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Contractor in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Contractor irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. Contractor agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- e. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- f. **False Claims Act:** Contractor acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* Contractor's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Contractor's liability.

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- g. **Whistleblower Protections:** Contractor shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, Contractor shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to Contractor or its agents prior to reporting to any governmental entity and/or the public.
- h. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Contractor under this Agreement.
- i. **Set Off:** The State may set off any sums which Contractor owes the State against any sums due Contractor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.
- j. **Taxes Due to the State:** Contractor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- k. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- l. **Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Contractor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <https://bgs.vermont.gov/purchasing-contracting/debarment>
- m. **Confidentiality:** Contractor acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- n. **Marketing:** Contractor shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- o. **Non-Appropriation:** If an order made under this Participating Addendum extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support the order, the State Purchaser may cancel the order at the end of the fiscal year, or

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otherwise upon the expiration of existing appropriation authority. If the order is funded in whole or in part by Federal funds, and those Federal funds become unavailable or reduced, the State Purchaser may suspend or cancel the order immediately and shall have no obligation to pay from State revenues.

- p. **Continuity of Performance:** In the event of a dispute between Contractor and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- q. **State Facilities:** If the State makes space available to Contractor in any State facility during the term of this Agreement for purposes of Contractor's performance under this Agreement, Contractor shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
- r. **SOV Cybersecurity Standard 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update 2023-01, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:
<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>.
- s. **INFORMATION SECURITY REQUIREMENTS:** During the one (1) year warranty period and during the term of any subsequent Contractor provided maintenance services purchased by the applicable State Purchaser, Contractor shall provide State Purchaser with (i) corrections of errors or non-conformities with Contractor's licensed software, and (ii) updates, upgrades, modifications, new releases, and corrective programming to Contractor's licensed software, in each of clause (i) and (ii) that are provided without charge to other customers of Contractor that have subscribed to Contractor's maintenance services. Contractor shall provide the applicable State Purchaser with a summary of the corrections, errors, updates, upgrades, modifications, new releases, and corrective programming within thirty (30) days of installation. Provided the applicable State Purchaser purchases BlueCrest Protect for each applicable piece of automation equipment, in cases where the state is not permitted to manage/modify the automation equipment (server/computer/other), the contractor agrees to update and provide patches for the automation equipment and any installed operating systems or applications on a quarterly basis (at minimum). The contractor will submit a report to the state of updates installed within 30 days of the installation as well as a plan of actions and milestones (POA&M) to remediate any vulnerabilities ranging from critical to low. The contractor will provide an upgrade path (at State Purchaser's cost) for any operating systems and applications listed as beyond "end-of-life" or EOL within 90 days of the EOL and complete the EOL operating system and/or application upgrade as soon as practical following BlueCrest's review and qualification of such upgrade and/or application and material availability.

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By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By DMT Solutions Global Corporation DBA
BlueCrest:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Jennifer M.V. Fitch

Name: _____

Title: BGS Commissioner

Title: _____