

State of Georgia
Cooperative Master Agreement Form
Georgia Department of Administrative Services

Solicitation Title	Solicitation Number	Contract Number
Pharmacy Benefit Services	41900-DCH0000136	

1. This Contract is entered into between the Lead State and the Contractor named below:

Lead State's Name

Georgia Department of Administrative Services

(hereafter called "DOAS" or "Lead State")

Contractor's Name

(hereafter called Contractor)

2. **Initial Term:** One (1) year

Renewal Terms: Nine (9)

one-year renewal options

3. The parties hereto agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Master Agreement.

Attachment 1: Master Agreement Terms and Conditions
Attachment 2: RFP (referenced above)
Attachment 3: Contractor's Final Response

IN WITNESS WHEREOF, this Contract has been executed by the parties hereto.

4. **Contractor**

Contractor's Name *(If other than an individual, state whether a corporation, partnership, etc.)*

By *(Authorized Signature)*

Date Signed

Printed Name and Title of Person Signing

Address

5. **Lead State**

Lead State Name

Georgia Department of Administrative Services

By *(Authorized Signature)*

Date Signed

Printed Name and Title of Person Signing

Address

STATE OF GEORGIA
Cooperative Contract
Attachment J
Master Agreement Terms and Conditions

1. **Background and Purpose.** Pursuant to O.C.G.A. § 50-5-51(1), the Georgia Department of Administrative Services (“DOAS”) maintains the power and authority to canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of supplies, materials, equipment, and services required by the state government and any of its offices, agencies, departments, boards, bureaus, commissions, institutions, and other entities of the state under competitive bidding.

The State of Georgia is a member of the National Association of State Procurement Officials (“NASPO”) and participates in NASPO ValuePoint, NASPO’s cooperative purchasing program. As permitted under O.C.G.A. § 50-5-51(9), DOAS has entered into an agreement with NASPO ValuePoint to serve as Lead State for the procurement of Pharmacy Benefit Services. Other Participating States may have requested to be named in the RFP as potential users of this Contract, and other entities may become Participating Entities after execution of this Master Agreement. NASPO ValuePoint is not a party to this Master Agreement; however, NASPO ValuePoint will be involved in contract administration as provided in this Master Agreement.

Request for Proposals No. 41900-DCH0000136 (“the RFP”) was issued by the Georgia Department of Administrative Services for the purposes of awarding Master Agreement(s) to one or more suppliers to: obtain services of suppliers to provide pharmacy benefit administrator services to Fee-for-Service (FFS) Medicaid pharmacy program members (including pediatric members) and full-benefit dual eligible members; provide clinical management services for the Participating Entity’s state’s FFS Medicaid pharmacy program; support audits in accordance with applicable state laws to identify and respond to potential fraud, waste, and abuse within the system; and administer the invoicing, collection, financial analysis, and negotiations of pharmacy drug rebates for eligible federal pharmacy rebates and supplemental rebates to Participating Entities as further specified in Participation Agreements.

The specific services to be procured pursuant to the RFP were Pharmacy Benefit Administrator Services, Pharmacy Clinical Management Services, Pharmacy Fraud, Waste, and Abuse (FWA) Audit Services, and Pharmacy Drug Rebate Services. Respondents were required to submit a response to mandatory requirements, as well as at least one of the four (4) services. Contractor submitted Contractor’s Response to the RFP, which sets forth Contractor’s qualifications, the manner in which Contractor proposes to fulfill the RFP requirements, and commitment to timely and successfully implement Contractor’s solution [where applicable] and provide the Services. Contractor was selected to provide (INSERT NAME OF SERVICES FOR WHICH CONTRACTOR WILL BE PROVIDING) as provided in the Awarded Item Schedule (hereinafter the “Services”, as further defined below).

2. **Definitions.** Definitions and acronyms are set forth in the RFP in Attachment B the RFP, entitled “Definitions and Acronyms”. Such terms will apply to the Contract and all documents incorporated herein unless a different meaning is otherwise assigned to specific term either explicitly in the body of this Contract or as provided below.
- a. **“Awarded Item Schedule”** means the summarizing document, if any, listing the Services as awarded and may also denote the Contractor providing such Services.
 - b. **“Contractor”** means the provider of the Services under the Contract as identified in the Cooperative Master Agreement Form. Contractor also includes its employees, subcontractors, agents and affiliates who are providing the services agree to under the Master Agreement.

- c. **“Contract” or “Master Agreement”** means this Agreement between the Lead State, acting on its own behalf and on behalf of NASP ValuePoint, and the Contractor, as defined by the Cooperative Master Agreement Form and its incorporated documents.
- d. **“Cooperative Master Agreement Form”** means the document that contains basic information about the Cooperative Contract and incorporates by reference the applicable Master Agreement Terms and Conditions, the RFP, Contractor’s Response to the RFP, the final pricing documentation for the Services and any mutually agreed clarifications, modifications, additions and deletions resulting from final contract negotiations. No objection or amendment by a Contractor to the RFP requirements or the Master Agreement shall be incorporated by reference into this Master Agreement unless DOAS has accepted the Contractor's objection or amendment in writing. The Cooperative Master Agreement Form is defined separately and referred to separately throughout the Master Agreement Contract Terms and Conditions as a means of identifying the location of certain information. For example, the initial term of the Master Agreement is defined by the dates in the Cooperative Master Agreement Form.
- e. **“Lead State”** means the State that manages and executes the cooperative procurement on behalf of NASPO ValuePoint and administers any resulting master agreement(s). The Georgia Department of Administrative Services is referred to as the “Lead State” or “DOAS” throughout this Master Agreement.
- f. **“Participating Addendum”** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirement, as further described in this Master Agreement.
- g. **“Participating Entity”** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- h. **“Participating State”** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- i. **“Purchasing Entity”** means a state, city, county, district, other political subdivision of a State, or other eligible legal entity, authorized by a Participating Addendum, who issues a Statement of Work and/or Purchase Order against the Master Agreement and becomes financially committed to the purchase. A Participating Entity may also be a Purchasing Entity.
- j. **“Response”, “Contractor’s Response” or “Final Response”** means the Contractor’s submitted response to the RFP, including any modifications or clarifications accepted by DOAS.
- k. **“RFP”** means the Request for Proposal (and any amendments or addenda thereto) specifically identified in the Cooperative Master Agreement Form that was issued to solicit the Services that are subject to the Master Agreement.
- l. **“Services”** means the services and deliverables as provided in the RFP and as further described by the Response, the Contract, and the Participating Addendum.

3. **Duration of Master Agreement.**

- a. **Contract Term.** The Contract shall begin and end on the dates specified in the Cooperative Master Agreement Form unless terminated earlier in accordance with the applicable terms and conditions.
- b. **Master Agreement Renewal.** DOAS shall have the option, in its sole discretion, to renew the Master Agreement for additional terms, as determined by DOAS, by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the Initial term or

Renewal term as specified in Section 2 of the Cooperative Agreement Contract Form . Upon DOAS's election, in its sole discretion, to renew any part of this Master Agreement, Contractor shall remain obligated to perform in strict accordance with this Master Agreement unless otherwise agreed by the Lead State and the Contractor

- c. **Master Agreement Extension.** In the event that this Master Agreement will terminate or be likely to terminate prior to the making of an award for a new contract for the Services under a subsequent solicitation, the Lead State may, with the written consent of Contractor, extend this Master Agreement for such period as may be necessary to afford the State a continuous supply of the Services.

4. Order of Preference.

- a. Any purchase made pursuant to this Master Agreement shall consist of the following documents:
 - i. A Participating Entity's Participating Addendum ("PA"), with the exception of any term that conflicts with Section 8 of the Master Agreement Terms and Conditions entitled "Participating Addenda" or Section 14 of the Master Agreement Terms and Conditions "NASPO ValuePoint Terms."
 - ii. Master Agreement Terms and Conditions, including all Exhibits and Attachments to the Master Agreement, excluding the RFP and Contractor's response.
 - iii. The RFP.
 - iv. Contractor's response to the RFP, as revised (if permitted) and accepted by the Lead State.
- b. 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.
- c. Contractor 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 this Master Agreement as an Exhibit, Appendix, or Attachment.

5. Description of Services.

- a. **Specifications in Bidding Documents.** All Services shall be provided in accordance with the specifications contained in the RFP, the terms of the Master Agreement, the terms of the applicable Participation Addendum, and as further described in Contractor's Response.
- b. **Pricing and Payment.** The Contractor will be paid for Services provided pursuant to the Master Agreement in accordance with the RFP and final pricing documents as incorporated into the Cooperative Master Agreement Form and the terms of the Master Agreement and applicable Participating Addendum. Terms of payment and fees for services to be performed must be included in a subsequent Statement of Work, as executed by the Participating Entity or Purchasing Entity.

- 6. **Certified Source of Services.** Pursuant to O.C.G.A. § 50-5-57, DOAS hereby certifies the Contractor as a source of supply to the offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to make purchases utilizing this Master Agreement. The execution of this Master Agreement only establishes the Contractor as an authorized source of supply by DOAS and creates no financial obligation on the part of DOAS. Furthermore, governmental entities of other states may execute Participating Addenda to obtain Services pursuant to the terms of this Master Agreement. The use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts is subject to the approval of the respective State Chief Procurement Official. Participating Entities are solely and individually financially responsible for their respective

purchases, and shall be responsible for their own charges, fees, and liabilities. The Lead State shall not be responsible for payment of any amounts owed by Participating Entities nor any other liabilities of Participating Entities. This Master Agreement is not exclusive. DOAS reserves the right to select other contractors to provide services similar to the Services described in the Master Agreement during the term of the Master Agreement. Participating States and Participating Entities may obtain similar services from other contractors. This Master Agreement does not guarantee any minimum level of purchases or use of Services.

7. **Intent of References to Bid Documents.** The references to obligations which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFP and the Contractor's Response. The failure to make reference to the terms of the RFP or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFP and the Contractor's Response. The contractual obligations of the Lead State, Participating Entities, and Purchasing Entities cannot be implied from the Contractor's Response.
8. **Participating Addenda.** The provision of Services to a Participating Entity and a Purchasing Entity shall be subject to the Participating Addendum negotiated and executed by the Participating Entity and Contractor. A sample Participating Addendum shall be provided by the Lead State for use by the Participating Entities. The Lead State will not be a party to the Participating Addenda and those agreements will be separate and distinct from the Master Agreement.
- a. The Participating Addendum shall incorporate this Master Agreement and may incorporate other terms and conditions specific to the Participating Entity's engagement including but not limited to:
 - i. A Statement of Work addressing items specific to the Participating Entity's engagement such as:
 - 1. Financial Considerations such as Maximum Compensation Amount, Invoicing, Terms and Payment terms
 - 2. Schedule of Events
 - 3. Milestones and deliverables
 - 4. Testing and Acceptance Requirements
 - 5. Warranties
 - 6. Service Level Agreements/Performance Guarantees/Liquidated Damages
 - 7. Project Management
 - 8. Staffing
 - ii. Confidentiality Requirements, incorporation of data breach provisions, incorporation of HIPPA and HITECH and a Business Associate Agreement specific to the engagement by the Participating Entity
 - iii. Provisions specific to the Participating Entity's engagement such as those relating to indemnification, taxes, limitation of liability, bonding, insurance requirements, termination, assignment, subcontracting, and approval requirements for changes to contractor staffing
 - iv. Ordering Procedures specific to the Participating Entity
 - v. Language incorporating the Participating Entity's rules, regulations, laws, and policies
 - vi. Language incorporating funding source requirements (for example, contract provisions required for federally funded contracts)
 - b. Contractor may not deliver Services under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

- c. Each Participating Entity will identify and utilize its own appropriate purchasing procedure and documentation.
- d. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. Such alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used to place the order.
- e. Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- f. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating Entities and Purchasing Entities are limited to their own Statements of Work and institutions having available funds. Participating States and Participating Entities incur no financial obligations on behalf of their political subdivisions.
- g. Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor nor may they impact the rights of other Participating Entities. Participating Addenda shall not be construed to amend the following provisions that prescribe NASPO ValuePoint program considerations: 1) Term of the Master Agreement; Participants and Scope; Administrative Fee; Right to Publish; NASPO ValuePoint Summary and Detailed Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; and Individual Customers. Any such language is void and of no effect.
- h. The construction and effect of any Participating Addendum to the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's state. Venue for any Claim, dispute, or action concerning the effect of a Participating Addendum shall be in the Participating Entity's State.
- i. Participating Entities, who are not states, may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Requests for such participation should be coordinated through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; such entity must ensure that it maintains the requisite procurement authority to execute a Participating Addendum.
- j. A Participating Addendum will terminate immediately and absolutely if the Participating Entity that is party to the Participating Addendum determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the Participating Entity cannot fulfill its obligations

under the Participating Addendum, which determination is at the Participating Entity's sole discretion and shall be conclusive.

- k. Notwithstanding the expiration, cancellation, or termination of the Master Agreement, Contractor agrees to perform in accordance with the terms of any Participating Addendum then outstanding at the time of such expiration or termination.
- l. Pursuant to Appendix to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this master agreement.
- m. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspo.valuepoint.org to support documentation of participation and posting in appropriate Database.

9. **Insurance.** The Contractor shall maintain insurance which shall protect the Contractor and the State of Georgia (as an additional insured), NASPO ValuePoint, Participating Entities, and Purchasing Entities from any Claims for bodily injury, property damage, or personal injury covered by the indemnification obligations set forth in the Master Agreement attached to this solicitation throughout the duration of the Master Agreement. Contractor shall procure and maintain the insurance policies described below at the Contractor's own expense and shall furnish the participating entity an insurance certificate listing the State of Georgia as certificate holder and as an additional insured. The insurance certificate must document that the Commercial General Liability insurance coverage purchased by the Contractor includes contractual liability coverage applicable to the Master Agreement. In addition, the insurance certificate must 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 (authorized to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of notice of cancellation to the participating entity.

Contractor is required to maintain the following insurance coverage's during the term of the Master Agreement:

Workers Compensation (WC):

Statutory Limits Required for all Contracts
NO EXEMPTIONS

Commercial General Liability (CGL):

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
Automobile Liability Combined Single Limit	\$ 2,000,000
Professional Liability	\$ 2,000,000
Cyber Risk Insurance	\$ 15,000,000
Umbrella Liability	\$ 2,000,000

Additional Insured: Contractor shall add the "<Name of Participating Entity>, its officers, employees and agents" as an additional insured under the commercial general, automobile, and umbrella policies.

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to the Participating Entity. Certificates of Insurance showing such coverage to be in force shall be filed with the Participating Entity prior to commencement of any work under a Participation Addendum. The foregoing policies shall be obtained from insurance companies licensed to do business in Participating Entity's State and shall be with companies acceptable to the Participating Entity, which must have a minimum A.M. Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

Within ten (10) business days of award, Contractor must procure the required insurance and provide the Participating Entity with two (2) Certificates of Insurance. Certificates must reference the contract number. The supplier's submitted pricing must include the cost of the required insurance. No contract performance shall occur unless and until the required insurance certificates are provided.

- 10. Indemnification.** Contractor hereby releases and agrees to indemnify and hold harmless the Georgia Department of Administrative Services, the State of Georgia, its departments, agencies and instrumentalities (including but not limited to the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, The State Employee Broad Form Liability Funds, the State Insurance and Hazard Reserve Fund, and other self-insured funds, all such funds hereinafter collectively referred to as the "Funds") , Participating Entities, Purchasing Entities, NASPO ValuePoint, and each of their current or former officers, directors, and employees, in individual and official capacities from and against any and all Claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, **to the extent** caused by, ~~growing out of, or arising from this Contract, due to~~ any **wrongful** act or **wrongful** omission on the part of Contractor, its agents, employees, customers, invitees, licensees or others working at the direction of Contractor or on its behalf, ~~or due to~~ any breach of this Contract by Contractor, ~~or due to~~ the insolvency or declaration of bankruptcy by Contractor, ~~or due to~~ the **wrongful** application or violation of any pertinent federal, state or local law, rule or regulation. No settlement or compromise of any Claim, loss or damage shall be binding upon the indemnified part(ies) unless approved in writing by the indemnified part(ies). This indemnification extends to the successors and assigns of Contractor, and this indemnification survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor. Nothing in this Master Agreement, nor in any Participating Addendum, shall limit or affect Contractor's liability arising from Claims brought by any third party.

11. Warranties.

- a. Construction of Warranties Expressed in the Master Agreement and Participating Addendum with Warranties Implied by Law.** All warranties made by the Contractor and/or subcontractors in all provisions of the Master Agreement, Participating Addenda, and the Contractor's Response, whether or not the Master Agreement or Participating Addenda specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the Services to be provided, or by provision of samples to the Lead State or Participating Entity(ies) shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Master Agreement and Participating Addenda are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services provided by the Contractor. The provisions of this section apply during the term of the Master Agreement and Participating Addenda and any extensions or renewals thereof.

- b. **Warranty – Nonconforming Services and Goods.** All Services and any goods delivered by Contractor to the Participating Entities shall be free from any defects in design, material, or workmanship. If any Services or goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor’s warranty, the Participating Entities shall have the option of ~~returning, repairing, or replacing the Contractor repairing~~ the defective Services or goods at Contractor’s expense. Payment for Services and any goods shall not constitute acceptance. Acceptance by the Participating Entity shall not relieve the Contractor of its warranty or any other obligation under the Master Agreement and Participating Addenda.
- c. **Originality and Title to Concepts, Materials, and Goods Produced.** Contractor represents and warrants that all the concepts, materials, goods and Services produced, or provided to the Participating Entities shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and Services and the Participating Entities use of same and the exercise by the Participating Entities of the rights granted by the Master Agreement and Participating Addenda shall not infringe upon any other work, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and Services contemplated by the Master Agreement and Participating Addenda.
- d. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the Services provided hereunder will appear and operate in conformance with the terms and conditions of the Master Agreement and Participating Addenda.
- e. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Master Agreement and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Lead State and the Participating Entities.
- f. **Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Master Agreement and Participating Addenda are or will be fully satisfied by the Contractor so that the Lead State and the Participating Entities will not have any obligations with respect thereto.
- g. **Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Participating Entit(ies) is good and that transfer of title or license to the Participating Entit(ies) is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. ~~Title to any supplies, materials, or equipment shall remain in the Contractor until fully paid for by the Participating Entity.~~ Except as otherwise expressly authorized by the Participating Entity, all materials produced by Contractor personnel in performance of Services, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall be deemed to be work made for hire and shall be the property of the Participating Entity.

(1) Definitions.

(a) Work Product - All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Contractor specifically for a Participating Entity as set forward in a Participating Addendum Statement

of Work.

(b) **Contractor Materials** - Any and all intellectual property which is the exclusive property of the Contractor, even if such Contractor Materials are embedded or otherwise incorporated into Work Product. Contractor Materials includes without limitation any and all software and related documentation, reports, results, products, programs, routines, drawings, studies, specifications, photographs, graphics, artwork, computations, data, inventions, discoveries, improvements, concepts, creative works, designs, techniques and know-how, works of authorship, trade secrets, patents, trademarks, copyrights, or other proprietary data owned by Vendor prior to the effective date of this Agreement (“Preexisting Information”) or any such materials developed concurrently to this effort under separate contracts or efforts (“Concurrent Materials”).

(1) **Fixed Term License.** Contractor grants to Participating Entity a renewable, limited, non-exclusive, non-sublicensable, non-transferable right during the Term to use, to access, to host, and to permit the Participating Entity staff users identified in [to be identified at the Participating Addendum level] (“Users”) to use and access Contractor Materials, including the portions of the Pharmacy Benefits Management solution necessary for Participating Entity to receive the benefit of the Services. Further, Contractor grants to Participating Entity a perpetual, limited, non-exclusive, non-sublicensable, non-transferable right, to use, and to permit the Participating Users to use and access Contractor Materials embedded in the Work Product for the sole purpose of administrating the Participating Entity’s pharmacy processing program PROVIDED THAT this license does not apply to third party commercial off the shelf (COTS) software, programming, tools, documentation, materials, and other intellectual property, or materials, for which Contractor will obtain third party licenses for the term of the Participating Addendum only or to open source software, programming, tools, documentation, materials, and other intellectual property, or materials. For avoidance of doubt, Participating Entity shall not extract such Contractor Materials from Work Product for use separately therefrom. In the event the parties extend the Participating Addendum, the Participating Entity may extend the aforementioned license through the end of the extension period upon payment to Contractor of the license fee identified by Contractor for the extension period.

(2) **License Back.** Participating Entity hereby grants to Contractor a worldwide, royalty-free, fully paid-up, nonexclusive, nontransferable (except in the event of a Change of Control), non-sublicensable, irrevocable right and license to reproduce and have reproduced, to prepare derivative works, to distribute (by any means and using any technology, whether now known or unknown) copies to the public, to display or perform (by any means and using any technology, whether now known or unknown, including electronic transmission), to design, to develop, to make and have made, to use, to sell and offer for sale, to import and otherwise dispose of any and all products, apparatus, devices, services, or systems, and to practice and have practiced any method or process involved in the making or use of the Work Product. Contractor may grant sublicenses thereof to its affiliates, distributors, resellers, OEM (Original Equipment Manufacturer), VAR (Value-added Reseller), VAD (Value-added Distributor), downstream systems integrators and other downstream channels of distribution solely as embodied in products or services of Contractor.

- h. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the Services provided or used by it shall at a minimum conform to the standards in the Contractor’s industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.
- i. **Contractor’s Personnel and Staffing.** Contractor warrants that all persons assigned to perform

Services under this Contract are either lawful employees of Contractor or lawful employees of an authorized subcontractor. All persons assigned to perform Services under this Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services.

- j. **State Security.** Participating Entity and/or Purchasing Entity may require that a criminal background investigation be made of any and all Contractor personnel utilized to provide Services to Participating Entity and/or Purchasing Entity. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Master Agreement and any Participating Addendum and Statement of Work if such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the Participating Entity (or Lead State as applicable to activities solely applicable to the Master Agreement). The Contractor's employees, agents and subcontractors may be granted access to Participating Entity and/or Purchasing Entity computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the Master Agreement, Participating Addendum, and Statement of Work. Such access may be terminated at the sole discretion of the Participating Entity or Purchasing Entity. The Contractor shall provide immediate notice to Lead State, Participating Entity, and Purchasing Entity of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor represents and warrants that Contractor shall provide notice to Participating Entity of the changed status of any employee, agent or subcontractor granted access to Participating Entity or Purchasing Entity computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.
- k. **Use of State Vehicles.** Contractor warrants that no state-owned vehicles will be used by Contractor for the performance of Services under this Master Agreement. Contractor shall be responsible for providing transportation necessary to perform all Services.

12. Access to Confidential Information.

a. Obligations owed to Lead State:

- i. The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Lead State to the extent necessary to carry out the Contractor's responsibilities under the Master Agreement. The Contractor shall presume that all information received pursuant to the Master Agreement is confidential unless otherwise designated by the Lead State. If it is reasonably likely the Contractor will have access to the Lead State's confidential information, then:
 - 1. The Contractor shall provide to the Lead State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - 2. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - 3. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
 - 4. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.
- ii. The private or confidential data shall remain the property of the Lead State at all times. Some services performed for the Lead State may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to

sign such a nondisclosure agreement, if required, may result in termination of the Master Agreement.

- iii. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Lead State, either during the period of the Master Agreement or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Lead State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Master Agreement, in whatever form it is maintained, promptly at the request of the Lead State.
- iv. 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 Lead State and cooperate with the Lead State in any lawful effort to protect the confidential information.
- v. The Contractor shall immediately report to the Lead State any unauthorized disclosure of confidential information.
- vi. The Contractor's confidentiality obligation under the Master Agreement shall survive termination of the Master Agreement.

b. Minimum Obligations Owed to Each Participating Entity and Purchasing Entity.

- i. The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Participating Entity and/or Purchasing Entity to the extent necessary to carry out the Contractor's responsibilities. The Contractor shall presume that all information received from Participating Entity or Purchasing Entity is confidential unless otherwise designated by the Participating Entity or Purchasing Entity. If it is reasonably likely the Contractor will have access to the Participating Entity or Purchasing Entity's confidential information, then:
 - 1. The Contractor shall provide to the Participating Entity or Purchasing Entity a written description of the Contractor's policies and procedures to safeguard confidential information;
 - 2. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - 3. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
 - 4. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.
- ii. The private or confidential data shall remain the property of the Participating Entity or Purchasing Entity at all times. Some services performed for the Participating Entity or Purchasing Entity may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Participating Addendum or Statement of Work.
- iii. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Participating Entity, either during the period of the Master Agreement or thereafter. Any ~~data supplied to or~~ Work Product, to the extent that the Work Product is based

on the Participating Entity's data (i.e. it is not third-party data), created by the Contractor shall be considered the property of the Participating Entity or Purchasing Entity. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Master Agreement, in whatever form it is maintained, promptly at the request of the Participating Entity or Purchasing Entity.

- iv. 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 Participating Entity or Purchasing Entity and cooperate with the Participating Entity or Purchasing Entity in any lawful effort to protect the confidential information.
- v. The Contractor shall immediately report to the Participating Entity or Purchasing Entity any unauthorized disclosure of confidential information.

The Contractor's confidentiality obligation under the Participating Addendum or Statement of Work shall survive termination of the Participating Addendum or Statement of Work.

- c. Additional confidentiality obligations for each engagement under this Master Agreement by a Participating Entity or a Purchasing Entity may be addressed in the Participating Addendum or Statement of Work.

13. Use of Name or Intellectual Property. Throughout the duration of this Master Agreement, Contractor must secure prior written approval from the Lead State and applicable Participating Entity for the release of any information or intellectual property that pertains to the potential work or activities covered by the Master Agreement or any Participating Addendum, including but not limited to reference to or use of the Lead State or a Participating Entity's name, Great Seal of either State, Lead State or Participating Entity trademarks or logos, Coat of Arms, any Lead State or names of other subunits of the State government, or any State official or employee reference or use of name. News releases or release of broadcast e-mails pertaining to this Master Agreement or Participating Addendum shall not be made without prior written approval of the Lead State and applicable Participating Entity. The Contractor shall not make any representations of Lead State, Participating Entity, or NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

14. NASPO ValuePoint Terms.

- a. **Administrative Fee.** The Contractor(s) shall pay to NASPO ValuePoint an administrative fee that is one-quarter of one percent (0.25% or 0.0025) of the total DDI expenditures made by a Participating State for work under a Participating Addendum, according to terms included in the Master Agreement. At NASPO ValuePoint's discretion, the NASPO ValuePoint administrative fee may be collected as a one-time fee or as periodic payments.

b. NASPO ValuePoint Summary and Detailed Usage Reports.

- i. **Sales Data Reporting.** In accordance with this section, the Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which the Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to the Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this

section.

- ii. **Summary Sales Data.** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If the Contractor has no reportable Sales Data for the quarter, the Contractor shall submit a zero-sales report.
- iii. **Detailed Sales Data.** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. The Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- iv. **Executive Summary.** The Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which the Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and the Contractor will determine the format and content of the executive summary.

c. NASPO ValuePoint Cooperative Program Marketing and Performance Review.

- i. **Staff Education.** The Contractor shall work cooperatively with NASPO ValuePoint personnel. The Contractor shall present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.
- ii. **Onboarding Plan.** Upon request by NASPO ValuePoint, the Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor’s website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- iii. **Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- iv. **Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- v. **Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State

or NASPO ValuePoint, the Contractor shall provide a copy of any such provisions.

15. Changes in Contractor Personnel.

- a. Obligations to the Lead State.** The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, in writing as soon as reasonably practicable, at least fourteen (14) calendar days prior to the change. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Lead States approval to changes in key personnel may not be unreasonably withheld.
- b. Obligations to Participating Entities and Purchasing Entities.** The Contractor must notify the Participating Entity or Purchasing Entity of changes in the Contractor's key personnel, in writing as soon as reasonably practicable, at least fourteen (14) calendar days prior to the change. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal. The Participating Entity and Purchasing Entity reserve the right to approve changes in key personnel, as identified in the Contractor's proposal. The Participating Entity and Purchasing Entity approval to changes in key personnel may not be unreasonably withheld.

16. Termination of the Master Agreement.

- a. Immediate Termination by Lead State.** The Lead State may terminate the Master Agreement 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 the Services, the revocation or loss of such license or certification may result in immediate termination of the Master Agreement effective as of the date on which the license or certification is no longer in effect;
 - ii.** The Contractor furnished any statement, representation or certification in connection with the Master Agreement or the bidding process, which is materially false, deceptive, incorrect or incomplete; and/or
 - iii.** 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 Lead State reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law.
- b. Termination for Default.** If there is a default event caused by the Contractor, the Lead State shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Lead State's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the Lead State may:
 - i.** Immediately terminate the Master Agreement without additional written notice; and/or
 - ii.** Enforce the terms and conditions of the Master Agreement and seek any legal or equitable remedies, including but not limited to re-procurement cost.
- c. Termination for Convenience.** Following thirty (30) days' written notice, the Lead State may terminate the Master Agreement in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. The Lead State will have no liability to the Contractor for

any cause whatsoever arising out of, or in connection with termination, including, but not limited to, startup costs, overhead costs, lost profits, lost opportunities, resulting change in business condition, or other costs associated with the performance of the Master Agreement and Participating Addenda. In the event that this Master Agreement is terminated for convenience, each Participating Entity may either 1) elect to continue through the end of the current term of its Participating Addendum, and the parties thereto would continue the engagement as if the Master Agreement were still in effect, maintaining all rights, duties, and obligations thereunder; or 2) the Participating Entity may exercise its termination rights provided under the Participating Entity's Participating Addendum.

d. The Contractor's Termination Duties. Upon receipt of notice of termination of the Master Agreement or upon request of the Lead State, the Contractor shall:

- i. Cooperate in good faith with the Lead State and the Participating Entities, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- ii. Furnish a report to the Lead State and NASPO within thirty (30) days of the date of notice of termination, describing the status of all Participating Addenda and any information that the Lead State may request regarding the current state of work thereunder and transition plans and status; and
- iii. Provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services. The Contractor shall provide full disclosure to the Participating Entity about the equipment, software, or services required to perform the Services for the Participating Entity. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the Services to the Participating Entity or to another contractor. Further, in the event that the Lead State or Participating Entity has entered into or enters into agreements with other contractors for additional work related to services rendered under the Master Agreement, Contractor agrees to cooperate fully with such other contractors. Contractor shall not commit any act, which will interfere with the performance of work by any other contractor.

17. Force Majeure. Neither party shall be in default by reason of any failure in performance of this Contract ~~in accordance with for events outside of their~~ reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party. Matters of Contractor's finances may not be considered a force majeure. 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 Master Agreement or any Participating Addendum.

18. Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders ~~now or hereafter~~ in effect **as of the Effective Date** when performing under the Master Agreement, any Participating Addendum, and any Statement of Work including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors. **The Contractor its employees, agents, and subcontractors shall comply with all applicable changes in Federal laws, rules, and regulations for the duration of this Master Agreement. Future changes to State or local laws, rules, or regulations, are subject to the change request process and may result in an adjustment to the price.** The Contractor, its employees, agents and subcontractors 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 Master Agreement, any

Participating Addendum, and any Statement of Work. Contractor and Contractor's personnel shall also comply with all State of Georgia, Lead State, and Participating Entity, and Purchasing Entity policies and standards in effect during the performance of the Master Agreement, including but not limited to the State of Georgia, Lead State and Participating Entity policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. 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 Master Agreement. Contractor certifies that it is not currently engaged in and agrees for the duration of this Contract not to engage in a boycott of Israel, as defined in O.C.G.A. § 50-4-85.

- 19. Sexual Harassment Prevention.** The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy (the "Policy"), all contractors who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

If the Contractor, including its employees and subcontractors, violates the Policy, including but not limited to engaging in sexual harassment and/or retaliation, the Contractor may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from State premises, restricted access to State premises and/or personnel, termination of contract, and/or other corrective action(s) deemed necessary by the State.

- a. If Contractor is an individual who is regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:
 - i. Contractor has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;
 - ii. Contractor has completed sexual harassment prevention training in the last year and will continue to do so on an annual basis; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and,
 - iii. Upon request by the State, Contractor will provide documentation substantiating the completion of sexual harassment training.
- b. If Contractor has employees and subcontractors that are regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:
 - i. Contractor will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;
 - ii. Contractor has provided sexual harassment prevention training in the last year to such

employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

- iii. Upon request of the State, Contractor will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

20. Drug-free Workplace. The Contractor hereby certifies as follows:

- a. 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 Master Agreement; and
- b. If Contractor has more than one employee, including Contractor, 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 Master Agreement; and
- c. Contractor will secure from any subcontractor hired to work on any job assigned under this Master Agreement the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor'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:

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

21. Amendments. All amendments to the Master Agreement must be in writing and fully executed by duly authorized representatives of the Lead State and the Contractor.

22. 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 Master Agreement 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 where the State of Georgia is a party, such proceeding shall solely be brought in Superior Court of 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 of Georgia. A Participating Addendum may provide for alternative governing law and forum for matters where the State of Georgia is not a party in such litigation.

23. Assignment. Contractor shall not assign, sell, transfer, or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State, which written consent to assign, sell, transfer, or sublet rights, or delegate responsibilities under the Master Agreement, in whole or in part shall not be unreasonably withheld. For the purposes of construing this clause, a transfer of the controlling interest in the Contractor shall be considered an assignment. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to the NASPO ValuePoint.

24. Use of Third Parties. Except as may be expressly agreed to in writing by the Lead State, Contractor

shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Master Agreement or any of the work subsequently assigned under this Master Agreement. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Master Agreement shall in any way relieve Contractor of any responsibility, obligation or liability under this Master Agreement and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Master Agreement shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Lead State. The Lead State shall have the right to request the removal of a subcontractor from the Master Agreement for good cause.

- 25. Integration.** The Master Agreement represents the entire agreement between the Lead State and the Contractor. The Lead State and Contractor shall not rely on any representation that may have been made which is not included in the Master Agreement.
- 26. Headings or Captions.** The paragraph headings or captions used in the Master Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 27. Not a Joint Venture.** Nothing in the 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 the 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 Master Agreement.
- 28. Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Master Agreement, and for any default of activities and obligations.
- 29. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Master Agreement, this Master Agreement supersedes all prior contracts or agreements between the Lead State and the Contractor for the Services provided in connection with the Master Agreement.
- 30. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Lead State 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 Master Agreement shall not be construed as affecting any subsequent right to require performance or to Claim a breach.
- 31. 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 Master Agreement on behalf of the party at the address identified in the Cooperative Master Agreement Form. Each such notice shall be deemed to have been provided:
- a. At the time it is actually received; or,
 - b. Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
 - c. 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 name and address of the person designated to receive notice may be changed. Such change of the designated person shall be in writing to the other party and as provided herein.

- 32. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Master Agreement 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.
- 33. Severability.** If any provision of the Master Agreement 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 Master Agreement. Further, if any provision of the Master Agreement 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 Lead State and the Contractor to amend, modify, eliminate, or otherwise change any part of this Master Agreement shall not affect any other part of this Master Agreement, and the remainder of this Master Agreement shall continue to be of full force and effect.
- 34. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Master Agreement. Contractor shall ensure that all personnel providing Services to the State are responsive to the State's requirements and requests in all respects.
- 35. Authorization.** The persons signing this Master Agreement represent and warrant to the other parties that:
- a. It has the right, power and authority to enter into and perform its obligations under the Master Agreement; and
 - b. It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of the Master Agreement and the Master Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 36. Successors in Interest.** All the terms, provisions, and conditions of the Master Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 37. 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 Master Agreement 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 Lead State and the Participating Entities. 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 Master Agreement, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses 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.
- 38. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Master Agreement upon an agreement or understanding for commission, percentage,

brokerage or contingency.

39. 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. Additionally, the open records and freedom of information laws of a Participating Entity shall govern record requests made of said Participating Entity.

40. Debarred, Suspended, and Ineligible Status. Debarred, Suspended, and Ineligible Status. Contractor certifies that neither it nor any of its principals nor subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental entity. This certification represents a recurring certification made at the time each Participating Addendum is executed under this Master Agreement. Contractor shall immediately notify the Lead State in the event that Contractor is suspended or debarred by a governmental entity.

41. Taxes. Lead State is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. Lead State is exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request.

For work performed for the State of Georgia, including but not limited to any entity of the State of Georgia, Contractor or an authorized subcontractor must provide the Lead State with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Master Agreement, which verification is incorporated herein by reference.

42. Certification Regarding Sales and Use Tax. By executing the Master Agreement, 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 Master Agreement void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Lead State or its representative filing for damages for breach of contract.

43. Obligations Beyond Contract Term. The Master Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Master Agreement. All obligations of the Contractor incurred or existing under the Master Agreement as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Master Agreement.

44. Counterparts and Electronic Signature. The Lead State and the Contractor agree that the Master Agreement 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. The parties hereto agree and consent to the use of electronic signatures solely for the purposes of executing the Master Agreement or any related transactional document. Such electronic signature shall be deemed to have the same full and binding effect as a handwritten signature. By signing this Master Agreement, the parties hereto are agreeing to consent to transact business using electronic communications and to utilize electronic signatures in lieu of using paper documents. If either party prefers not to do so, the party may request to receive paper copies. Furthermore, either party may withdraw its consent regarding transaction of business using electronic communications and signatures, which shall only impact communications and signatures issued after the date of such withdrawal of consent.

45. Further Assurances and Corrective Instruments. The Lead State 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 Master Agreement.

46. Liquidated Damages. Notwithstanding or any language, clause, section, or provision to the contrary: (a) the total, maximum, aggregate amount of liquidated damages and associated costs that may be assessed under any Participating Addendum shall not exceed ten (10) percent of the monthly invoice for the applicable module for any single month; (b) Contractor shall not be liable for Liquidated Damages if a failure to meet a SLA is caused, in whole or in part, by changes in scope, the acts or omissions of the Participating Entity or a third party, or a force majeure event; (c) Contractor has a right to dispute any Liquidated Damages assessment with which it does not agree; (d) the assessment of Liquidated Damages is the Participating Entity's sole and exclusive remedy for the Contractor's failure to achieve any Service Level Agreement or for any delay or other event that triggers Liquidated Damages; and (e) for avoidance of doubt, if a single failure, delay, or other event triggers multiple Liquidated Damages, the Participating Entity can only assess one (1) Liquidated Damage.

Justifications to Attachment J State Contract

- Paragraph 10: Conduent looks forward to discussing indemnification requirements with the State, most notably that the current language could be clarified, similar to the redline provided, to require that Conduent stand behind its work and indemnify for any fault, negligence or other wrongdoing. The indemnification clause, as originally drafted, could impose exposure on Conduent when it performs properly under the agreement, which likely isn't the State's intent.
- Paragraph 11(b): Conduent will stand behind its work and replace any goods or services found to be defective in material or workmanship, but the option to return or replace seem more applicable to nonconforming goods as opposed to this procurement for complex software.
- Paragraph 11(g): Conduent has proposed redlines to clarify the intellectual property rights of the parties (i.e. the specific licenses being offered and ensuring the State has ownership of Work Product developed under the contract and a perpetual license to use and access Contractor Materials embedded in the Work Product).
- Paragraph 12(b)(iii): In some cases, Contractors may rely on data through a license with a third-party, and it is not possible for contractors to convey ownership of this material to the State.
- Paragraph 17: For the benefit of both sides, Conduent proposes a minor clarification related to "in accordance with". Conduent believes this edit is consistent with the State's intent.
- Paragraph 18: As a participant in this industry, Conduent accepts risks related to changes in Federal law or regulation, and we will ensure our offerings remain compliant with any Federal requirements. State and Local laws and regulations can vary wildly, however, and in the event there is a substantial and material difference required by one State (but not all), it isn't possible to forecast or reasonably price what that risk may be.
- Paragraph 46: Conduent seeks a reasonable cap on the amount of Liquidated Damages that can be assessed in any given month.