



NASPO ValuePoint Master Agreement No.: 23009

This Contract is between the State of Minnesota, acting through its Commissioner of Administration (“Lead State”) and Hitachi Vantara LLC, whose designated business address is 2535 Augustine Drive, Santa Clara, CA 95054 (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

Recitals

1. The State of Minnesota, Department of Administration, Office of State Procurement, on behalf of the State of Minnesota and NASPO ValuePoint Cooperative Procurement Program (“NASPO ValuePoint”) issued a solicitation to establish Minnesota NASPO ValuePoint Master Agreement(s) (“Contract”) with qualified manufacturers for Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage, including related Peripherals & Services);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract; and
4. All authorized governmental entities in any state or participating US Territory are welcome to use the resulting Master Agreement through NASPO ValuePoint with the approval of the State Chief Procurement Official. Upon final award of the overarching Master Agreement, Contractors are able to sign Participating Addendums (PA) at the option of Participating States. Participating States reserve the right to add state specific terms and conditions and modify the scope of the contract in their Participating Addendum as allowed by the Master Agreement.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

- a. Effective date. July 1, 2023, or the date the Lead State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
- b. Expiration date. June 30, 2025. This Master Agreement may be extended for up to an additional 36 months, in increments as determined by the Lead State, through a duly executed amendment.
- c. If, in the judgment of the Lead State, a follow-on, competitive procurement will be unavoidably delayed beyond the planned date of execution of the follow-on master agreement, this Master Agreement may be extended for a reasonable period of time, not to exceed six months. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

2. **Representations and Warranties**

- a. Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the Lead State is empowered to engage such assistance as deemed necessary.
- b. Contractor warrants that it is duly qualified and shall perform its obligations under this Master Agreement in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor’s industry, trade, or profession, and in accordance with the specifications set forth in this Master Agreement, to the satisfaction of the Lead State.
- c. Contractor warrants that it possesses the legal authority to enter into this Master Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Master Agreement, or any part thereof, and to bind Contractor to its terms.

3. **Awarded Band(s)**

The solicitation included three product Bands: Band 1, Personal Computing Devices – Windows Operating Systems: Desktops, Laptops, Tablets; and Band 2, Personal Computing Devices – Non-Windows Operating Systems: Desktops, Laptops, Tablets; and Band 3, Servers and Storage. The Contractor is awarded the following Band(s):

Band 3, Servers and Storage

4. **Configuration Dollar Limits**

The following configuration limits apply to the Master Agreement. Participating Entities may define their configuration limits in their Participating Addendum. The Participating Entity’s Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Product and Service Schedule.

The dollar limits identified below are based on a SINGLE computer/system configuration. This is NOT a restriction on the purchase of multiple configurations (e.g., an entity could purchase 10 laptops at \$15,000 each, for a total purchase price of \$150,000).

<u>ITEM</u>	<u>CONFIGURATION</u>
Band One	\$15,000
Band Two	\$15,000
Band Three	\$1,000,000
Peripherals	\$10,000
Services	Addressed in the Participating Addendum

5. **Restrictions**

The following restrictions apply to the Master Agreement. A Participating Entity may set further restrictions of products in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Entity’s Product and Service Schedule.

- a. Software
 - 1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
 - 2. Any software purchased must be related to the procurement of equipment.

3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment, except for the exceptions allowed under Paragraph 5.a.4.

4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (Band 3) purchased, is allowed and may be procured after the initial purchase of equipment.

b. General Services

1. Services must be related to the procurement of equipment.

2. Service limits will be addressed by each State.

3. Wireless phone and internet service is not allowed.

4. Managed Print Services are not allowed.

c. Cloud Services

1. Cloud Services are restricted to Services that function as operating systems and software needed to support or configure hardware purchased under the scope of the contract and is subject to equipment configuration limits.

2. Any Cloud Service purchased must be related to the procurement of equipment.

d. Third-Party Products

1. Third-Party Products can be offered only in the Bands they have been awarded. All third-party products must meet the definition(s) of the Band(s) in which they are being offered.

2. Products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment cannot be offered unless approved by the Lead State.

e. Additional Product/Services

1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.

2. Lease/Rentals of equipment may be allowed and will be addressed by each State.

3. Cellular Phone Equipment is not allowed.

4. EPEAT Bronze requirement may be waived, on a State case-by-case basis, if approved by the State's Chief Procurement Officer. EPEAT Bronze requirement does not currently apply to storage.

6. Authorized Representative

- a. Master Agreement Administrator. The Master Agreement Administrator designated by NASPO ValuePoint and the State of Minnesota, Department of Administration is Elizabeth Randa, Acquisition Management Specialist.

Elizabeth Randa, Acquisition Management Specialist
Department of Administration
Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
E-mail: elizabeth.randa@state.mn.us
Phone: 651.201.3122

- b. Contractor's Authorized Representative. The Contractor's Authorized Representative is Karin Miyamoto, Sales Operations - Enterprise.

Karin Miyamoto, Sales Operations - Enterprise
Hitachi Vantara LLC
2535 Augustine Drive
Santa Clara, CA 95054
Email: karin.miyamoto@hitachivantara.com and Legal.Administration@hitachivantara.com
Phone: 630.875.4385

If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the Lead State.

7. Notices

If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. An email shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed to the Master Agreement Administrator.

8. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

Exhibit A: NASPO ValuePoint Terms and Conditions
Exhibit B: Minnesota Terms and Conditions
Exhibit C: Requirement
Exhibit D: Price Schedule
Exhibit E: Contractor Terms and Conditions

9. Survival of Terms

The following clauses survive the expiration or cancellation of this Master Agreement: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that states it shall survive, shall survive.

10. Entire Agreement

This Contract and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.

1. Contractor

The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: Robert Launhardt
DocuSigned by:
Signature: Robert Launhardt
41E9CDFE7C15411...
Title: Revenue Deal Manager Date: 12/6/2023

2. State Agency

With delegated authority

Print name: Elizabeth M. Randa
DocuSigned by:
Signature: Elizabeth M. Randa
742DE739C8ED492...
Title: Acquisition Management Specialist Date: 12/7/2023

3. Commissioner of Administration

As delegated to The Office of State Procurement

Print name: Andy Doran
DocuSigned by:
Signature: Andy Doran
68D02A26D7604BA...
Title: IT Acquisitions Supervisor Date: 12/7/2023

Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Conflict of Terms/Order of Precedence.

- a. Any order placed under this Master Agreement shall consist of the following documents:
 1. A Participating Entity's Participating Addendum ("PA");
 2. Minnesota NASPO ValuePoint Master Agreement, as negotiated, including all exhibits;
 3. A Purchase Order issued against a PA (terms and conditions set forth in a Purchase Order will not be deemed to modify, diminish, or otherwise derogate the terms and conditions set forth in a Participating Addendum or Minnesota NASPO ValuePoint Master Agreement).
- 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. 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 or Attachment.
- c. Contractor terms and conditions may be incorporated if expressly accepted by the Lead State and attached to the Master Agreement as an Exhibit or Attachment, or by written reference (including reference to information contained in a URL or referenced policy). A written reference, including by URL or policy, is incorporated into the Master Agreement only if the Master Agreement expressly identifies that reference. URL's must be explicitly referenced to be incorporated into the Master Agreement. URL's contained within the URL's that are explicitly referenced are not incorporated into the Master Agreement. Any Contractor term or condition incorporated by URL or written reference applies to this Master Agreement only to the extent such term or condition is not prohibited by applicable law. Any change to information contained in a URL or referenced policy will not affect any financial obligation, place any additional material obligation on an ordering entity, or materially diminish an ordering entity's ability to use the product or service.
- d. A written Master Agreement (which may include the contents of the RFP and selected portions of Contractor's response incorporated therein by reference) will constitute the entire agreement of the parties to the Master Agreement. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the RFP, or terms listed or referenced on the Contractor's website not otherwise incorporated into the Master Agreement, in the Contractor quotation/sales order, or in similar documents subsequently provided by the Contractor.
- e. Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

2. Definitions.

- a. **Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.
- b. **Accessory** means a product that enhances the user experience but does not extend the functionality of the computer (e.g., mouse pad or monitor stand). For the purposes of this Contract, accessories are considered peripherals.

- c. **_____ as a Service (_aaS)** refers to any good provided in a subscription-based model that is defined in the industry as “_____ as a Service”. Examples are “Software as a Service”, “Infrastructure as a Service”, and “Storage as a Service”, and shall follow the NIST definitions of those services. _____ as a Service are permitted only when they meet the restrictions found in Paragraph 5.c of the Contract, above.
- d. **Band** means a category of products. There are three product bands which may be awarded through this RFP. Each product band includes related peripherals and services.
- e. **Components** are the parts that make up a computer configuration.
- f. **Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.
- g. **Configuration** means the combination of hardware and software components that make up the total functioning system.
- h. **Customer** (see Purchasing Entity).
- i. **Desktop** means a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: (1) the processor, 2) display monitor, and 3) input devices usually a keyboard and a mouse. Desktops, including desktop virtualization endpoints such as zero and thin clients, are included in Bands 1 and 2 of this Contract.
- j. **Embedded Software** means one or more software applications which permanently reside on a computing device.
- k. **Energy Star®** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes it easy to identify energy efficient computers by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.
- l. **EPEAT** is a type-1 ecolabel for identifying and purchasing sustainable IT products. EPEAT-registered products must meet sustainability criteria detailed in voluntary consensus-based standards that are free and publicly available on the Green Electronics Council’s website at www.greenelectronicscouncil.org. Products are classified as Bronze, Silver, or Gold based on meeting criteria that address the life cycle of the products. Product life cycle includes material extraction, hazardous substance reduction, end-of-life management, packaging, and corporate sustainability. Only products listed as Active in the online EPEAT Registry are considered to meet the EPEAT criteria.
- m. **Equipment** means hardware offered under this Master Agreement.
- n. **FOB Destination** means that shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.
- o. **FOB Inside Delivery** means that shipping charges are included in the price of the item, and that the shipped item becomes the legal property and responsibility of the receiver when it reaches the inside delivery point, which is beyond the front door or loading dock. FOB Inside Delivery is a special shipping arrangement that may include additional fees payable by the Purchasing Entity. FOB Inside Delivery must be annotated on the Purchasing Entity ordering document.

- p. **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- q. **Laptop** means a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad, and speakers in a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptops include notebooks, ultrabooks, netbooks, Zero and thin client devices, and computers with mobile operating systems. Laptops are included in Bands 1 and 2 of this Contract.
- r. **Lead State** means the State centrally administering any resulting Master Agreement(s).
- s. **Mandatory Requirement** is a requirement that the failure to meet results in the rejection of the responder's proposal unless all responders are unable to meet the mandatory requirement. The terms "must" and "shall" identify a mandatory requirement.
- t. **Manufacturer** means a company that, as one of its primary business functions, designs, assembles, owns the trademark/patent for, and markets branded computer equipment.
- u. **Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint, and the Contractor.
- v. **Middleware** means the software "glue" that helps programs and databases (which may be on different computers) work together. The most basic function of middleware is to enable communication between different pieces of software.
- w. **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
- x. **Option** means an item of equipment or a feature that may be chosen as an addition to or replacement for standard equipment and features.
- y. **Order or Purchase Order** means any purchase order, sales order, contract or other method used by a Purchasing Entity to order the Products.
- z. **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 requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.
- aa. **Participating Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- bb. **Participating State** means a state that has executed a Participating Addendum.

cc. **Partner** means a company, authorized by the Contractor and approved by the Participating Entity, to provide marketing, support, or other authorized contract services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Agreement. A Partner may include, but is not limited to, an agent, subcontractor, fulfillment partner, channel partner, business partner, servicing subcontractor, etc.

dd. **Peripherals** means any hardware product that can be attached to, added within, or networked with personal computers, servers, or storage. Peripherals extend the functionality of a computer without modifying the core components of the system.

ee. **Per Transaction Multiple Unit Discount** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase.

ff. **Premium Savings Package(s) (PSP)** are deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. NASPO ValuePoint reserves the right to expand and modify the PSP throughout the life of the contract. For more information see: <https://www.naspovaluepoint.org/portfolio/57/>.

gg. **Product** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

hh. **Purchasing Entity** means a state (including the District of Columbia and U.S. territories), city, county, district, other political subdivision of a state, other public entities domestic or foreign, and nonprofit organizations under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order under the terms of the Master Agreement, or any Participating Addendum thereto, and becomes financially committed to the purchase.

ii. **Ruggedized** means equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures, and wet or dusty conditions. Ruggedized equipment may be proposed under the band that most closely fits the equipment being proposed.

jj. **Server** means computer hardware dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. Servers may be either physical or virtual. Servers, including server appliances, are included in Band 3 of this Contract. Server appliances have their hardware and software preconfigured by the manufacturer, and include embedded networking components such as those found in blade chassis systems.

kk. **Services** are broadly classified as installation or de-installation, maintenance, support, training, migration, and optimization of Products offered or supplied under the Master Agreement. These classifications of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or hardware components), asset management, recycling or disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk or helpdesk, imaging, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contractors may offer limited professional services related ONLY to the equipment and configuration of the equipment purchased through the resulting contracts.

EACH PARTICIPATING ENTITY WILL DETERMINE RESTRICTIONS AND NEGOTIATE TERMS FOR SERVICES THROUGH THEIR PARTICIPATING ADDENDUM. Contractor's Warranty and Maintenance Support Terms are attached to this Master Agreement in Appendix E for informational purposes only.

ll. **Software** means, for the purposes of this Contract, commercial operating off the shelf machine-readable object code instructions including microcode, firmware, and operating system software that meet the restrictions specified

in the Definitions contained in Paragraph 5.a in the Contract above. “Software” applies to all parts of software and documentation, including new releases, updates, and modifications of software.

mm. **Storage** means hardware or a virtual appliance with the ability to store large amounts of data. Storage, including SAN switching necessary for the proper functioning of storage equipment, is included in Band 3 of this Contract

nn. **Storage Area Network (SAN)** is a high-speed special-purpose network (or subnetwork) that interconnects different kinds of data storage devices with associated data servers on behalf of a larger network of users.

oo. **Tablet** means a mobile computer that provides a touchscreen that acts as the primary means of control. Tablets, including notebooks, ultrabooks, and netbooks with touchscreen capabilities, are included in Bands 1 and 2 of this Contract.

pp. **Takeback Program** means the Contractor’s process for accepting the return of equipment or other products at the end of the product’s life.

qq. **Thin Client** is a lightweight computer that has been optimized for establishing a remote connection with a server-based computing environment.

rr. **Third Party Product** is any equipment or software sold by the Contractor that is manufactured by another company. Third Party Products are intended to enhance or supplement a Contractor’s own product line, and are not intended to represent more than a third of any Contractor’s total sales under this Master Agreement.

ss. **Upgrade** means the replacement of existing software, hardware, or hardware component with a newer version.

tt. **Warranty** means the Manufacturer’s general warranty tied to the product at the time of purchase.

uu. **Wide Area Network (WAN)** is a data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.

3. **Term of the Master Agreement.**

a. The initial term of this Master Agreement is for 2 years. This Master Agreement may be extended beyond the original contract period for 36 additional months at the Lead State’s discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. **Amendments.**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without a written amendment to the Master Agreement executed by the Contractor and Lead State as required by law. Master Agreement amendments will be negotiated by the Lead State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work.

5. Participants and Scope.

- a. Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations (collectively "Canadian Participating Entities"), may be eligible to use Contractor's Master Agreement.
- b. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. 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. The expectation is that these 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 by the Purchasing Entity to place the Order.
- c. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- d. 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. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.
- e. NASPO and NASPO ValuePoint are not parties to the Master Agreement.
- f. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.
- g. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation 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; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

h. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the Master Agreement, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; subject to any transfer rights and/or limitations in the Master Agreement, including any Appendices, and any Participating Addendum, sales of Products to the general public as surplus property; and, subject to any transfer rights and/or limitations in the Master Agreement, including its Appendices, and any Participating Addendum, fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Individual Customers.

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.

7. Independent Contractor.

The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as an agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

8. Contracting Personnel.

Contractor must provide adequate contracting personnel to assist states with the completing and processing Participating Addenda. It is preferred that each Contractor be able to provide each Participating Entity with a primary contact person for that Participating Entity.

9. Changes in Contractor Representation.

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 business days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. Such approval shall not be unreasonably withheld. 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.

10. Contractor Verification.

The Contractor is responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contractor must ensure partners utilized in the performance of this contract adhere to all the terms and conditions. The term Partner will be utilized in naming the relationship a Contractor has with another company to market and sell under the contract. Participating Entities will have final determination/approval if a Partner may be approved for that state in the role identified by the Contractor.

11. Contractor Performance Meeting.

An annual performance meeting may be held each year with the NASPO ValuePoint Sourcing Team. Historically performance meetings have been held in Minnesota, but the Lead State may hold the meetings in person or virtually at the Lead State's discretion.

All contractors that are invited to participate must send their Primary Account Representative, unless an exception is granted in writing by the Lead State. It is possible that not all contractors will be invited to participate in a performance meeting.

12. Laws and Regulations.

Any and all Products offered and furnished shall comply fully with all applicable Federal, State, and local laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State. To the extent any purchase is subject to Federal Acquisition Regulations, as may be required by the terms of a federal grant, a Participating Entity and Contractor may include in their Participating Addendum terms that reflect such a requirement.

13. Price and Rate Guarantee Period.

All minimum discounts and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for minimum discount or rate adjustment must be for a guarantee period as offered by the Contractor, and must be made at least 30 days prior to the effective date. Requests for minimum discount or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to minimum discounts or rates will be allowed.

14. Premium Savings Package Program.

The Lead State reserves the right to create a Premium Savings Package Program (PSP) as outlined in the Definitions, Paragraph 2.ee of Exhibit A. Participation by Contractor is voluntary. The details and commitments of the PSP will be detailed as a part of any request for Contractor to participate.

15. Services.

Participating Entities must explicitly allow services in their Participating Addenda for the approved services to be allowed under that Participating Addendum. Contractor's warranty services and hardware and software support services shall be provided under the terms set forth in its Warranty Maintenance and Support Services. Such terms and warranties shall be made available to Participating Entities for review prior the negotiation of a Participating Addendum, or if not incorporated into a Participating Addendum, to a Purchasing Entity prior to issuance of an Order, and shall meet or exceed the terms and warranties set forth in this Master Agreement. The Participating Addendum by each Participating Entity will address service agreement terms and related travel.

16. Ordering.

- a. Master Agreement and purchase order numbers shall be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies or services contemplated by this Master Agreement.

- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement for any Product or Service listed on Contractor's PSS for the purchase of Equipment, licenses for Software, Maintenance Services, Professional Services, and Third-Party Products.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - 1. The Products being delivered;
 - 2. The place and requested time of delivery;
 - 3. A billing address;
 - 4. The name, phone number, and address of the Purchasing Entity representative;
 - 5. The price per hour or other pricing elements consistent with this Master Agreement and the Contractor's or Partner's quote, as applicable;
 - 6. A ceiling amount of the order for services being ordered;
 - 7. The Master Agreement identifier; and
 - 8. Statement of Work, when applicable. Orders for Professional Services shall be transacted using a Statement of Work.
- g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

17. Trade-In.

Any trade-in programs offered during the life of the Master Agreement must be approved by the Lead State. Participating Entities must explicitly allow trade-in programs in their Participating Addenda for the approved programs to be allowed under that Participating Addendum. Trade-in value shall not decrease the discounts offered through the Master Agreement.

18. Shipping and Delivery.

- a. The prices are the delivered price to any Purchasing Entity for standard 3-5 day shipping. If an order is requested with expedited shipping, the Contractor must provide a firm "not to exceed" price for the expedited shipping on the quote. All deliveries shall be FOB Destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Contractor is responsible and liable for loss or damage to any Equipment or Software incurred during shipping or delivery. Purchasing Entity is responsible and liable for loss or damage incurred after shipping or delivery except for latent defects, fraud and Contractor's warranty obligations. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- b. Specific delivery instructions, including FOB Inside Delivery, will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to promptly notify the Purchasing Entity placing the Order.
- c. All Equipment (and Software, if shipped) must be delivered in the manufacturer's standard package. Costs shall include all packing and crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipment shall be marked with the Purchasing Entity's Purchase Order number and other information sufficient for the Purchasing Entity to properly identify the shipment as outlined in the Participating Addendum of the Purchasing Entity.

19. Inspection and Acceptance.

- a. Where the Master Agreement, a Participating Addendum, or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- b. Commencing upon delivery of the Equipment and Software to the Purchasing Entity, the Purchasing Entity shall have 30 days ("Acceptance Period") to inspect the delivered Equipment and/or Software to confirm that the Equipment and/or Software conform with the Contractor's published specifications ("Specifications") ("Acceptance Criteria"). The Purchasing Entity will notify the Contractor in writing prior to the end of the Acceptance Period if the Equipment and/or Software does not meet the Acceptance Criteria, and if no such notification is received, the Equipment and/or Software shall be deemed to be accepted. If the Purchasing Entity does notify Contractor prior to the end of the Acceptance Period that the Equipment and/or Software does not conform with the Acceptance Criteria, Contractor shall repair or replace the Equipment and/or Software, and the Purchasing Entity shall have the opportunity to determine whether the repaired or replaced Equipment and/or Software performs in accordance with the Specifications for a second thirty day period, commencing on the date that Contractor advises Purchasing Entity in writing that repair or replacement has occurred. If the Equipment and/or Software fails to function in accordance with the Specifications during the second Acceptance Period, Purchasing Entity will notify Contractor of such failure, and Contractor shall accept the return of the non-conforming Equipment and/or Software, and the Order (or the portion of the Order covering the non-conforming Equipment and/or Software) shall be cancelled. Neither party shall have any further obligation to the other with regard to the Order (or the portion of the Order containing the non-conforming Equipment and/or Software), and Contractor shall refund to Purchasing Entity the monies paid, if any, for the Equipment and/or Software. Notwithstanding the foregoing, nothing in this clause shall mitigate Contractor's obligations with regard to warranties for Equipment and/or Software that are accepted or deemed to be accepted. If requested by Contractor, Purchasing Entity shall acknowledge in writing the acceptance of Equipment and/or Software that meet the Acceptance Criteria.

If any Services do not conform to the contract requirements set forth in the Master Agreement, Participating Addendum, or a Statement of Work, the Purchasing Entity may require the Contractor to perform the Services again

in conformity with contract Master Agreement, Participating Addendum, or Statement of Work requirements, at no increase in Order amount, by providing Contractor with written notification of such non-conformance prior to accepting the Service as set forth in the applicable Statement of Work, and Contractor shall reperform the Services (or cause the Services to be re-performed). When defects cannot be corrected by re-performance, the Purchasing Entity may cancel or modify the Order to remove the nonconforming services from the Order and shall be refunded any amounts paid for the nonconforming Services.

20. Title of Product.

a. Equipment. Upon delivery of the Equipment to the Purchasing Entity as described in Section 18, Contractor shall convey to Purchasing Entity title to the Equipment free and clear of all liens, encumbrances, or other security interests.

b. Software. To the extent that the Software sold under the Master Agreement is Commercial Off-the-Shelf Software, such Software is licensed, not sold, to the Purchasing Entity. The Contract Vendor and its licensors reserve and retain all rights not expressly granted to the Purchasing Entity. No right, title or interest to Contractor IP of Contractor or its licensors is granted to the Purchasing Entity. Licenses to such Software are provided in accordance with the terms of the manufacturer's written End User License Agreement tied to the product at the time of purchase. Contractor's license terms are attached to this Master Agreement for informational purposes as Exhibit E.

c. Professional Services. The services that Contractor will deliver under this Master Agreement that are not part of break-fix or preventive maintenance or standard installation for a Product will be set forth and agreed in a Statement of Work that will be governed by this Master Agreement and the applicable Participating Addendum. Unless otherwise agreed by Contractor and a Participating Entity, "work made for hire" will not be within the scope of the Participating Addendum. If the Statement of Work specifies that Contractor will provide deliverables as part of the service, Contractor grants to the Purchasing Entity a worldwide, non-exclusive, non-transferable, royalty-free license to use the deliverables solely for the Purchasing Entity's internal use.

d. Contractor IP. Contractor or its licensors own all Intellectual Property rights in the Products provided under this Master Agreement, and all other tools, materials and technology that Contractor uses, provides or otherwise makes available for the purpose of providing the Products under this Master Agreement, including any items Contractor provides electronically or retains on Purchasing Entity's premises for that purpose. Without limitation, Contractor's Intellectual Property includes any works of authorship, program listings, tools, documentation, reports, specifications, implementations, drawings, work papers and similar works ("Work Product"); application programming instructions; documentation; sample code; software libraries; command line tools; templates; other related technology; and improvements and enhancements made to any of the foregoing (collectively, "Contractor IP"). Neither the Lead State, the Participating State or the Purchasing Entity have any right, title or interest in the Contractor IP, other than the license rights in Software, Work Product and any other Hitachi IP, as expressly stated in this Master Agreement and any license terms agreed to between Contractor and the Participating Entity and, if applicable, the Purchasing Entity.

Purchasing Entity must not take any action nor permit any third-party to take or allow any action that will, or is likely to, jeopardize Contractor's or its licensors' rights in the Contractor IP, including to: (i) copy, modify, disassemble, decompile or otherwise reverse engineer any Contractor IP, except to the extent permitted by applicable law; (ii) sub-license any Contractor IP without Contractor's prior written approval; (iii) register or seek to register anywhere in the world any competing Intellectual Property, or to use or allow the use of any Contractor IP for that purpose; (iv) delete or tamper with any proprietary notices on or in the Contractor IP; (v) do anything that diminishes the value of any trademarks included in the Contractor IP; (vi) use the Contractor IP in any manner which creates the impression that the Contractor IP belongs to, or is identified with Purchasing Entity; or (vii) use the Contractor IP in violation of applicable law.

21. Warranty.

The warranty period for Equipment and Software shall begin upon delivery of the Equipment and Software to the Purchasing Entity as set forth in Section 18 of this Exhibit A of this Master Agreement, and the warranty for Services shall commence upon completion of the Service. The warranty periods and remedies shall be as set forth in Contractor's standard Warranty Maintenance and Support Terms ("WMS Terms"). The WMS Terms are attached to this Master Agreement in Exhibit E. The warranty provided for the Equipment and Software must be the manufacturer's written warranty tied to the product at the time of purchase and must include the following: (a) the Equipment and Software perform according to the Specifications during the manufacturer's warranty period applicable to the specific Equipment and Software ("Warranty Period"), and (b) the Equipment and Software are designed and manufactured in a commercially reasonable manner. Such terms and warranties shall be made available to Participating Entities for review prior the negotiation of a Participating Addendum, or if not incorporated into a Participating Addendum, to a Purchasing Entity prior to issuance of an Order, and shall meet or exceed the terms and warranties set forth in this Master Agreement.

For Third Party Products sold by the Contractor, the Contractor will assign the manufacturer or publisher's warranty and maintenance. The Contractor will provide warranty and maintenance call numbers and assist the customer in engaging the manufacturer on warranty and maintenance issues.

Subject to the WMS Terms, upon breach of the warranty and upon notification from the Purchasing Entity in accordance with the provisions of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Equipment and/or Software whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Equipment and/or Software proves to be inadequate, the Contractor will refund the full amount of any payments that have been made and accept the return of the nonconforming Equipment and/or Software. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or so ordered by the court. Contractor's provision of installation and maintenance services will be as described in the WMS Terms.

Subject to the WMS Terms, Contractor warrants that its provision of Services will be in a workmanlike manner in accordance with generally accepted industry standards.

EXCEPT AS SPECIFIED IN THIS MASTER AGREEMENT ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. CONTRACTOR DOES NOT WARRANTY THAT ANY PRODUCT OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR-FREE. Subject to the exceptions set forth in Section 34 of this Exhibit A, Contractor warrants that any Products provided under this Master Agreement will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party, and that the remedies available to the Participating Entity and/or Purchasing Entity for a breach of this warranty are limited to those described in the aforementioned Section 34.

22. System Failure or Damage.

In the event of system failure or damage caused by the Contractor or its Product, the Contractor shall use reasonable efforts to restore or assist in restoring the system to operational capacity. The Contractor shall be responsible under this provision to the extent a 'system' is defined at the time of the Order; otherwise the rights of the Purchasing Entity shall be governed by the Warranty.

23. Payment.

Contractor shall issue invoices to Purchasing Entity upon shipment of Equipment and/or Software or, for Services, at the time described in the Contractor or Partner quote or an agreed Statement of Work. Payment will be made within 30 days of the invoice date of an undisputed invoice unless otherwise agreed in the Order. Purchasing Entity must advise Contractor in writing immediately if an invoice is disputed, and the Contractor and Purchasing Entity will work together in good faith to expeditiously resolve the dispute. If payment is not received within 45 days, the Contractor may assess

overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law, or suspend the provision of Products to the Purchasing Entity until outstanding payments are received.

Payments will be remitted by mail or electronically. Contractor and its Partner(s) will not accept payment by Purchasing Card.

Prices are exclusive of taxes, duties, and fees, unless otherwise quoted. If a withholding tax is required by law, the tax will be added and identified on the applicable invoice. All applicable taxes, duties, and fees must be identified on the quote.

24. Leasing or Alternative Financing Methods.

Lease purchase and term leases are allowable only for Purchasing Entities whose rules and regulations permit leasing of Equipment and/or Software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process and if the applicable PAs permit leasing. No lease agreements will be reviewed or evaluated as part of the RFP evaluation process.

25. Contract Provisions for Orders Utilizing Federal Funds.

Pursuant to Appendix II 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.

26. Self Audit.

The Contractor must conduct at a minimum a quarterly self-audit, unless approved by the Lead State. The audit will sample a minimum of one tenth of one percent (.001) of orders with a maximum of 100 audits per quarter conducted. For example: Up to 1,000 sales = 1 audit; 10,000 sales = 10 audits; Up to 100,000 sales = 100 audits. This will be a random sample of orders and invoices and must include documentation of pricing. Summary findings must be reported to Lead State with actions to correct documented findings.

27. Assignment/Subcontracts.

- a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State. Notwithstanding the foregoing, Contractor may subcontract responsibilities under a specific Order without the approval of the Lead State, and such subcontract right shall only be subject to the approval of the Purchasing Entity and the terms of the Participating Addendum.
- b. The Lead State, or Participating Entity, shall not assign, delegate or otherwise transfer all or any part of this Master Agreement without prior written consent from Contractor, except for assignment or delegation to a Participating Entity State agency or eligible Purchasing Entity. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO ValuePoint and other third parties.

28. Insurance.

- a. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Lead State and in each Participating Entity's state and having a rating of A-, Class VII or

better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

1. Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Participating Entity a certificate of insurance showing the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating Entity as an additional insured, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating Entity as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. During the term of this Master Agreement, the Lead State and Participating Entities may require Contractor to provide evidence of coverage that meets the requirements of this Section. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

29. Administrative Fees.

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable.

b. The NASPO ValuePoint Administrative Fee in this section shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

c. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Purchasing Entity may allow the Contractor to adjust the Master Agreement pricing to account for these additional fees for purchases made by Purchasing Entities within the jurisdiction of the Participating Entity. All

such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

30. NASPO ValuePoint Reports

- a. **Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which 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 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.
- b. **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 Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- c. **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. 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.
- d. **Sales Data Crosswalks.** Reserved.
- e. **Executive Summary.** Contractor shall, upon reasonable 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 Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

31. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review.

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to 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 qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within 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 contract offer as available in the Participating Entity.

- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to Paragraph 42 of Exhibit A, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to Paragraph 42 of Exhibit A or to terminate for default pursuant to Paragraph 44 of Exhibit A.
- g. The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under this Master Agreement. Nothing in this Section 31.g shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

32. Right to Publish.

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the public release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of 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. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

33. Records Administration and Audit.

- a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect compliance with Contractor's obligations under this Master Agreement and administration of payments and fees. Not more than once by each entity in any twelve (12) month period, Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency (collectively, the "Auditing Parties"), to audit, inspect, examine, copy and transcribe Contractor's books, documents, papers and records for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. To the extent under the control of the Lead State, a Participating Entity or a Purchasing Entity, the Auditing Party will provide not less than thirty days' prior written notice to Contractor of an audit, and such notice shall define and limit the scope of the audit. The parties will mutually agree on the location for the audit. During the audit, the Auditing Parties will be accompanied by Contractor personnel at all times while on Contractor's premises, and the audit may prevent Contractor's ability to conduct business. Access to proprietary or confidential information will be limited to that information necessary to conduct the audit and to the extent such information is not subject to a third-party confidentiality agreement. The Auditing Party will be subject to the confidentiality obligations of this Master Agreement or applicable Participating Addendum.

c. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

d. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

34. Indemnification

a. General Indemnity. Contractor shall indemnify, defend (to the extent permitted by a state's Attorney General), and hold harmless an Indemnified Party from any third party claims or causes of action, including attorney's fees, for damages related to bodily injury, death and tangible property damage to the extent arising from Contractor's willful misconduct or negligent acts or omissions.

"Indemnified Party" means NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the Indemnified Party's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the Indemnified Party's failure to fulfill its obligation under this Contract.

b. Intellectual Property Indemnification.

1. In the event that a third party makes a claim against the Indemnified Party that Contractor's Products infringe the intellectual property rights of that third party, the Indemnified Party shall promptly notify the Contractor. Subject to the provisions of this Paragraph 34(b), the Contractor, at its own expense, shall indemnify; defend to the extent permitted by the Indemnified Party's laws, and hold harmless the Indemnified Party against any loss, cost, expense, or liability (including legal fees) arising out of such a claim, whether or not such claim is successful against the Indemnified Party, provided that: (i) Contractor has sole control of the defense and any settlement of the claim, unless the Indemnified Party's law requires approval for a third party to defend the Indemnified Party and such approval is not received, and (ii) the Indemnified Party assists Contractor as reasonably requested, at Contractor's expense.

2. If such a claim has occurred, or in the Contractor's opinion is likely to occur, the Contractor shall either procure for the Indemnified Party the right to continue using the Product, or replace the Product with something that has similar functionality to the Product, or modify the Product so that it is no longer infringing, without materially affecting its utility or functionality. If an option satisfactory to the Indemnified Party is not reasonably available, the Indemnified Party shall return the materials or products to the Contractor, upon written request of the Contractor and at the Contractor's expense, and Contractor will refund the purchase price of the Product to the Indemnified Party.

3. The indemnity and remedies in Paragraphs 34.b.1. and 34.b.2. above will not apply to any Third Party Product (including without limitation any Open Source Software contained in or provided with a Third Party Product), or any Product that the Indemnified Party has, or any person on its behalf has: (i) modified or combined with any third party product not authorized or approved by Contractor; (ii) used outside Contractor's stated standard operating environment for the Product or for a purpose not authorized by Contractor; or (iii) failed to use a more recent version of the Product that was available to the Indemnified Party and would have avoided the infringement or where the claim arises due to any material or item that Indemnified Party owns or has sourced from a third party itself.

4. If (i) Contractor is or becomes aware of any infringement claim made against a third-party branded product offered by Contractor through this Master Agreement, (ii) the third-party branded product is determined to infringe upon the intellectual property rights of another third party, and (iii) such infringement is not remedied by the third party so that the product is no longer infringing, Contractor shall immediately cease offering the product under this Master Agreement and notify the Lead State, NASPO, Participating Entities, and purchasers of the product. The provisions of this Paragraph 34(b) comprise the Indemnified Party's sole and exclusive remedy against Contractor for any and all third-party claims of intellectual property infringement.

5. The provisions of this Paragraph 34 will be in effect unless it is expressly prohibited by an enacted law, code, statute or ordinance applicable to the Indemnified Party, in which event only the portion of this clause that is so prohibited will be void.

35. Limitations of Liability

Unless otherwise agreed in a Participating Addendum, the Lead State and the Participating State agree that Contractor's liability to the Lead State, a Participating State, or a Purchasing Entity for any actions, damages, claims, liabilities, costs, expenses or losses, including breach of warranty or in tort, in any way arising out of or relating to the Master Agreement or the Products provided or the Services performed hereunder will not exceed the greater of (i) the amount of all fees paid to the Contractor or Contractor's Partner by the Purchasing Entity under this Master Agreement during the preceding twelve (12) months; and (ii) \$5,000,000. The foregoing limitation does not apply to Contractor's indemnification obligations, including intellectual property infringement, in the Master Agreement or to damages resulting from death or bodily injury caused by Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of the Master Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder, even if the Contractor has been advised of the possibility of such damages. All parties agree that the Master Agreement does not create any right or cause of action for any third party against the other except for third party claims that fit within the indemnification provision of this Master Agreement.

36. License of Pre-Existing Intellectual Property.

Contractor grants the Purchasing Entity a limited, non-exclusive, non-transferable, non-sublicensable, royalty free license to use, publish, translate, reproduce, perform, display, and dispose of the Intellectual Property, and its derivatives delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). Purchasing Entity can request the right to transfer Pre-Existing Intellectual Property in accordance with Contractor's transfer policy and Contractor's approval will not be unreasonably withheld. Transfer of devices or Pre-Existing Intellectual Property between agencies or divisions of the same governmental organization shall not require prior approval. Contractor's Pre-existing Intellectual Property includes that which is contained in the products, materials, equipment or services, excluding software, that are purchased through this Master Agreement. The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

37. Assignment of Antitrust Rights.

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be

amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

38. Debarment.

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

39. Governing Law and Venue.

- a. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- b. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

40. Confidentiality, Non-Disclosure, and Injunctive Relief.

- a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and

preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. **Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. **Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to Paragraph 33 of Exhibit A. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

41. Public Information.

This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

42. Cancellation.

Unless otherwise set forth in this Master Agreement, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate as set forth in Paragraph 44 of Exhibit A. A Purchasing Entity may cancel an Order or Statement of Work up to 5 business days prior to shipment or scheduled commencement of Service.

43. Force Majeure.

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may

terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

44. Defaults and Remedies.

- a. The occurrence of any of the following events shall be an event of default under this Master Agreement:
 1. Nonperformance of contractual requirements; or
 2. A material breach of this Master Agreement; or
 3. Any certification, representation or warranty by Contractor in response to the RFP or in this Master Agreement that proves to be untrue or materially misleading; or
 4. Institution of proceedings under any bankruptcy, insolvency, court-ordered reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 5. Any default specified in another section of this Master Agreement.
- b. Upon the occurrence of an event of default, except for material breach, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages, in an amount that is mutually agreed by the Lead State and Contractor or as determined by a court of law, to the extent provided for under this Master Agreement. The Lead State may immediately terminate this Master Agreement upon material breach of the Master Agreement by Contractor.
- c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
 1. Exercise any remedy provided by law; and
 2. Terminate this Master Agreement and any related contracts or portions thereof; and
 3. Impose liquidated damages in an amount as mutually agreed by the parties as provided in this Master Agreement; and
 4. Suspend Contractor from being able to respond to future bid solicitations; and
 5. Suspend Contractor's performance; and
 6. Withhold payment until the default is remedied.
- d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity

shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code, subject to Section 35 of Exhibit A.

45. Waiver of Breach.

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

46. Notices.

If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile or electronic transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed as follows:

Elizabeth Randa, Acquisition Management Specialist
112 Administration Bldg.
50 Sherburne Avenue
St. Paul, MN 55155
elizabeth.randa@state.mn.us

47. No Waiver of Sovereign Immunity.

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Exhibit B: Minnesota Terms and Conditions

1. Change Requests.

The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered within the Band(s). Products introduced during the term of the Master Agreement shall go through a formal review process. The process for updating the products offered within a Band is outlined in Paragraph 2 of Exhibit B. The Contractor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contractor to provide a summary of its research of those products being recommended for inclusion in the Master Agreement as well as defining how adding the product will enhance the Master Agreement. The Lead State may request that products, other than those recommended, are added to the Master Agreement.

In the event that the Lead State desires to add new products and services that are not included in the original Master Agreement, the Lead State requires that independent manufacturers and resellers cooperate with the already established Contractor in order to meet the Lead State's requirements. Evidence of the need to add products or services should be demonstrated to the Lead State. The Master Agreement shall be modified via supplement or amendment. The Lead State will negotiate the inclusion of the products and services with the Contractor. No products or services will be added to the Master Agreement without the Lead State's prior approval.

2. Product and Service Schedule (PSS).

- a. Creating the Product and Service Schedule (PSS). Contractor will use the attached sample PSS to create and maintain a complete listing of all products and services offered under the Master Agreement. The PSS must conform to the contracted minimum discounts. Contractor may create and maintain a separate PSS for a Participating Entity based on the requirements and restrictions of the Participating Entity.

Contractors are encouraged to provide remote learning bundles for K-12 Education. These bundles can be included in the response to the PSS.

- b. Maintaining the PSS.

1. In General. Throughout the term of the Master Agreement, on a quarterly basis, Contractor may update the PSS to make model changes, add new products or services, or remove obsolete or discontinued products or services. Any updates to the PSS must conform to the Master Agreement requirements, including the scope of the Master Agreement and contracted minimum discounts.

2. Process. Contractor must provide notification to the Lead State of any changes to their PSS using the attached Action Request Form (ARF).

- a) The Lead State does not need to approve Contractor's request to make model changes, add their own manufactured products, or remove discontinued or obsolete products or services, and Contractor does not need the Lead State's approval prior to posting an updated PSS.
- b) The Lead State must approve Contractor's request to add new third party manufacturers to Contractor's PSS. If the proposed third-party manufacturer holds a NASPO Master Agreement for Computer Equipment, Contractor must obtain written authorization from that manufacturer. Contractor must have the Lead State's approval prior to posting the updated PSS.
- c) Contractor must maintain a historic record of all past PSSs on their dedicated NASPO ValuePoint website.

d) Pursuant to the audit provisions of the Master Agreement, upon the request of NASPO ValuePoint, the Lead State, or a Participating Entity, Contractor must provide an historic version of any Baseline Price List.

3. Purchase Orders.

There will be no minimum order requirements or charges to process an individual purchase order. The Participating Addendum number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract.

4. Risk of Loss or Damage.

Reserved.

5. Payment Card Industry Data Security Standard and Cardholder Information Security ("PCIDSS").

Contractor does not accept payment by purchasing card and will not at any time during the term of the Master Agreement receive or have access to cardholder data. Therefore, the parties agree that Contractor is not subject to the standards set by the PCIDSS.

6. Foreign Outsourcing of Work.

Upon request, the Contractor is required to provide information regarding the location of where services, data storage, and location of data processing under the Master Agreement will be performed.

7. State Audits (Minn. Stat. § 16C.05, subd. 5).

The books, records, documents, and accounting procedures and practices of the Contractor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Lead State's Legislative Auditor or State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The Lead State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions.

8. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the contractor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

9. Human Rights/Affirmative Action.

The Lead State requires affirmative action compliance by its Contractors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

a. Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

b. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are

contained in various provisions of Minn. R. 5000.3400 5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552 5000.3559.

c. Disabled Workers. Minn. R. 5000.3550 provides the Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- (e) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

d. Consequences. The consequences of a Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.

e. Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

10. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized

Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the Lead State may require Contractor to verify its exempt status.

11. Americans with Disabilities Act (ADA).

Products provided under the Master Agreement must comply with the requirements of the Americans with Disabilities Act (ADA). The Contractor's catalog and other marketing materials utilized to offer products under the Master Agreement must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contractor agrees that the customer can assume the product meets or exceeds the ADA requirements.

12. Nonvisual Access Standards.

Pursuant to Minn. Stat. § 16C.145, the Contractor shall comply with the following nonvisual technology access standards:

- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

13. Accessibility Standards.

Contractor acknowledges and is fully aware that the Lead State (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars among others), manufactured by Contractor ("Digital Products"). Contractor shall provide upon request prospective buyers with Accessibility Conformance Reports (ACRs) that use the [ITIC's Voluntary Product Accessibility Template 508](#) version 2.3 or newer. As upgrades are made to the Digital Products available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standard, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the Digital Products available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the Lead State so that the Lead State may review the changes. Contractor warrants that the Digital Products comply with the above-mentioned accessibility Standard. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the Lead State to consider the Contractor in default.

14. Conflict Minerals.

Contractor agrees to provide information upon request regarding adherence to the Conflict Minerals section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1502).

See: <http://beta.congress.gov/111/bills/hr4173/111hr4173enr.pdf#page=838>
<http://www.sec.gov/news/press/2012/2012-163.htm>

15. Hazardous Substances.

To the extent that the goods to be supplied by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable state and federal laws and regulations, the Contractor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

16. Copyrighted Material Waiver.

The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.

17. Publicity.

The Contractor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

18. Performance While Dispute is Pending.

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

19. Organizational Conflicts of Interest.

An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a. the Contractor is unable or potentially unable to render impartial assistance or advice to the State;
- b. the Contractor's objectivity in performing the work is or might be otherwise impaired; or
- c. the Contractor has an unfair competitive advantage.

The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Lead State's Department of Administration's Office of State Procurement that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Lead State may, at its discretion, cancel the Master Agreement. In the event the Contractor was aware of an organizational conflict of interest

prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the Lead State may terminate the Master Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

20. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions. Instructions for certification:

1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding \$25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from federal procurement and nonprocurement programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and debarment.

b. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

21. Government Data Practices.

The Contractor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the Lead State to the Contractor and all data provided to the Lead State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with the Master Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the Lead State. The Lead State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the Lead State.

The Contractor agrees to indemnify, save, and hold the Lead State, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Master Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Master Agreement, the Contractor shall retain responsibility under the terms of this article for such work.

22. Survivability.

Certain rights and duties of the Lead State and Contractor will survive the expiration or cancellation of the RFP and resulting Master Agreement. These rights and duties include but are not limited to paragraphs: Indemnification; Limitations of Liability; State Audits; Government Data Practices; Governing Law and Venue; Publicity; and Administrative Fees.

23. Severability.

If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the Lead State and the Contractor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.

Exhibit C: Requirements

1. Contractor Verification.

Contractor must be a manufacturer of a Product in the Band(s) it is awarded a Master Agreement. "Re-branding" a product that is manufactured by another company does not meet this requirement. If the Contractor ceases production, sells or assigns their manufacturing to another vendor, or otherwise no longer manufactures a product during the life of the Master Agreement the Lead State reserves the right to terminate the Contractor's Master Agreement.

2. Warranty and Maintenance.

Contractor must ensure warranty service and maintenance for all equipment, including third party products provided. The Contractor must facilitate the Manufacturer or Publisher warranty and maintenance of third party products furnished through the Master Agreement.

3. Website.

Contractor must develop and maintain a URL to a web site specific to the awarded Master Agreement. Contractor's Master Agreement website must offer twenty-four (24) hours per day, seven (7) days per week availability, except for regularly scheduled maintenance times. The website must be separate from the Contractor's commercially available (i.e., public) on-line catalog and ordering systems. No other items or pricing may be shown on the website without written approval from the Lead State

a. Mandatory Specifications:

- Designated Baseline Price List(s) (e.g., MSRP, List, or Education)
- Product and Service Schedule (PSS)
- Product specifications, pricing, and configuration aids for the major product categories proposed that can be used to obtain an on-line quote,
- Service options and service agreements available on the contract. Please refer to Paragraph 5.
- Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns
- Sales representatives for participating entities
- Links to environmental certification, including but not limited to take-back/recycling programs, EPEAT, Energy Star, etc.

b. Desirable Specifications:

- Purchase order tracking
- Information on accessibility and accessible products
- Signed Master Agreement
- Online ordering capability with the ability to remember multiple ship to locations (if applicable to product)
- List of approved partners, if applicable

Within 30 calendar days of the notice of intent to award a Master Agreement, Contractor must provide a sample URL of the Master Agreement webpage to the Lead State for review and approval. The Lead State will review and determine acceptability of the website format and data. If the information is determined to be unacceptable or incorrect, the Contractor will have 15 calendar days to provide revisions to the Lead State. After the Lead State approves the website, Contractor may not make material changes to the website without notifying the Lead State through the ARF process and receiving written approval of the changes.

4. **Environmental Certifications.**

Contractor must include environmental or supply chain responsibility certifications and registrations for products sold through this Contract on their website. Contractor must provide these certifications and registrations for specific products to Participating Entities upon request.

5. **EPEAT Registration.**

Contractor agrees that applicable products offered that have EPEAT Standards provided under the Master Agreement must have achieved a minimum EPEAT Bronze registration. This requirement does not apply to Band 3.

Contractor may propose the addition of a product that has not yet achieved a minimum EPEAT Bronze registration. The Lead State, in its sole discretion may require Contractor to provide the following documentation to support the addition of the proposed product:

- A letter from the Green Electronics Council (GEC) on GEC's letterhead confirming that the verification process is underway; or
- A copy of Contractor's GEC contract, Conformity Assurance Board (CAB) contract, and a letter from Contractor's CAB stating that the relevant product has been registered with the CAB and that verification is underway.

The Lead State reserves the right to reject the inclusion of such product, or if approved, require Contractor to remove the product at a later date if the product does not achieve a minimum EPEAT Bronze registration. The Contractor must remove any products that subsequently exit the verification process without achieving EPEAT Bronze or greater from the Master Agreement.

6. **Third-Party Products.**

Some products offered may be manufactured by a third party. Contractor, however, must provide or facilitate the warranty service and maintenance for all Third-Party Products on the Master Agreement either directly or pass-through from the manufacturer. Contractor may not offer products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment without approval from the Lead State. Warranty for third-party products must be provided by the Contractor. Warranty documents for products manufactured by a third party are preferred to be delivered to the Participating Entity with the products. Contractor can only offer Third-Party Products in a Band they have been awarded.

Third-Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of Contractor's total sales under this Master Agreement. The Lead State may limit the sale of Third-Party Products through the Master Agreement during the life of the Master Agreement should Third-Party Product sales be determined to consistently exceed one third of the total sales under this Master Agreement. Such limitation may take the form of any action the Lead State so chooses, up to and including non-renewal or cancellation of the Master Agreement.

7. **Partner Utilization.**

If utilizing Partners, the Contractor is responsible for the Partner providing Products and Services. Participating Entities have the option of utilizing Partners. Contractor must provide a Participating Entity a copy of its plan for partner utilization upon request. Contractor must make available a list of approved partners for each Participating Entity. Participating Entities must approve specific Partners as outlined within the relevant Participating Addendum, and only Partners approved by the Participating Entity may be deployed. The Participating Entity will define the process to add and remove Partners in their Participating Addendum. To the extent that Contractor subcontracts a portion of an Order to one of its Partners or authorizes a Partner to perform Maintenance and Support Services, Contractor will be responsible for the performance of the Partner.

8. 2019 National Defense Authorization Act, Section 889(f)(3).

Under the 2019 National Defense Authorization Act, Section 889(f)(3), the US military is prohibited from purchasing video surveillance and telecommunications equipment from certain Chinese-owned technology firms. While US state are not subject to this act, there is increasing concern for the security of state data. Contractor certifies for the term of this Master Agreement that it is not subject to laws, rules, or policies potentially requiring disclosure of, or provision of access to, customer data to foreign governments or entities controlled by foreign governments, and that Contractor's Products do not contain, include, or utilize components or services supplied by any entity subject to the same. Contractor also certifies that its Products do not contain, include, or utilize any covered technology prohibited under Section 889 of the National Defense Authorization Act, as amended.

Exhibit D: Pricing Schedule

Attached and incorporated into this Master Agreement as Exhibit D is the Price Schedule.

Exhibit D: Price Schedule

Lease Rates

Master Agreement: 23009
Contractor Name: Hitachi Vantara LLC

All Awarded Bands

Optional: Lease Rates

The minimum amount to be financed is \$100,000, with term length options between 24 and 60 months. The lease rates will be available in the PSS.

Please note: The rates are indicative of and are subject to an individual Municipal borrower’s credit profile, acceptable documentation and internal exposure limits. Other lease structures available.

Exhibit D: Price Schedule*NASPO ValuePoint Computer Equipment (2023-2028)***CONTROL SET****Master Agreement:** 23009**Contractor Name:** Hitachi Vantara LLC**Awarded Bands:**

	Band 1: Personal Computing Devices (Windows)
	Band 2: Personal Computing Devices (Non-Windows)
x	Band 3: Servers and Storage

Band	Category Code	Category Description	Discount off Baseline List
3	3B	Band 3 - Minimum Discount	12.5%
3	3B-1	Storage Category 3A	40.0%
3	3B-2	Storage Category 3B	20.0%
3	3B-3	Server Category 3C	12.5%
3	3B-4	Product Maintenance, Installation, Support and Training	0.0%
3	3B-5	Service/Consulting	30.0%
3	3T	Band 3 - Third Party Product Minimum Discount	12.5%
3	3T-1	3rd Party Product Category 3D	12.5%
3	3T-2	Warranty	0.0%
3	3T-3	Maintenance	0.0%
3	3T-4	Training	0.0%
3	3T-5	Installation	0.0%
3	3T-6	Service/Consulting	0.0%
	S	Migration Engineer	50.0%
	S	Migration Delivery Lead	50.0%
	S	GDDC Project Coordinator	50.0%
	S	GDDC Project Manager	50.0%
	S	GDDC Senior Project Manager	50.0%
	S	GDDC Associate Technical Consultant	50.0%
	S	GDDC Associate Technical Consultant I	50.0%
	S	GDDC Associate Technical Consultant II	50.0%
	S	GDDC Technical Consultant	50.0%
	S	GDDC Senior Technical Consultant	50.0%
	S	Project Coordinator	30.0%
	S	Project Manager	30.0%
	S	Senior Project Manager	30.0%
	S	Program Manager	30.0%
	S	Associate Technical Consultant	30.0%
	S	Senior Technical Consultant	30.0%
	S	Technical Consultant	30.0%
	S	Field Solutions Engineer	30.0%
	S	SAM Engineer	30.0%
	S	Block Time Engineer	30.0%

Exhibit D: Price Schedule

Band	Category Code	Category Description	Discount off Baseline List
	S	Cloud (Rean)	30.0%
	S	Cloud (Rean)	30.0%
	S	Digital Business Principal Architect	30.0%
	S	Digital Business Senior Architect	30.0%
	S	Senior Digital Business Consultant	30.0%
	S	Digital Business Consultant	30.0%
	S	Digital Business Associate Consultant	30.0%

Exhibit D: Price Schedule

Discount Structure

Master Agreement:23009

Contractor Name:Hitachi Vantara LLC

Baseline Price List:Posted on Contractor's dedicated NASPO ValuePoint website

Band 3: Servers and Storage			
Band	Category Code	Category Description	Discount off Baseline List
3	3B	Band 3 - Minimum Discount	12.5%
3	3B-1	Storage Category 3A	40.0%
3	3B-2	Storage Category 3B	20.0%
3	3B-3	Server Category 3C	12.5%
3	3T	Band 3 - Third Party Product Minimum Discount	12.5%
3	3T-1	3rd Party Product Category 3D	12.5%

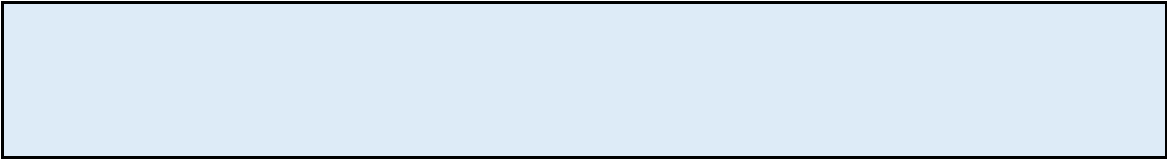


Exhibit D: Price Schedule

Volume-Based Discounts

Master Agreement: 23009
Contractor Name: Hitachi Vantara LLC

All Awarded Bands

1. Per Transaction Multiple Unit Discount(s)

Contractor provides a contractual volume discount program as follows based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity, or multiple entities conducting a cooperative purchase.

Min \$ Single Transaction	Max \$ Single Transaction	Per Transaction Multiple Unit Discount
\$1,000,000.00	\$2,999,999.99	1.0%
\$3,000,000.00	\$4,999,999.99	1.5%
\$5,000,000.00	No Max	2.0%

2. Cumulative Discount(s)

Contractor provides a cumulative volume discount as follows based on dollars resulting from the cumulative purchases by all purchases made by Purchasing Entities for the duration of the Master Agreement.

Threshold	Discount Level
\$20,000,000.00	1.0%
\$30,000,000.00	1.5%
\$40,000,000.00	2.0%

3. Other Discount(s)

Additional discount(s) available.

N/A

Exhibit D: Price Schedule**Services****Master Agreement:** 23009**Contractor Name:** Hitachi Vantara LLC

Each Purchasing Entity will determine if and how services will be offered in the Participating Addendum.

Travel for Services will be negotiated with each Participating Entity in the Participating Addendum.

All Awarded Bands		
Category Code	Description of Service	Percent Discount
S	Warranty	0.0%
S	Maintenance	0.0%
S	Training	0.0%
S	Installation	0.0%
S	Hitachi's Service/Consulting	30.0%
S	Third Party Service/Consulting	0.0%
S	Migration Engineer	50.0%
S	Migration Delivery Lead	50.0%
S	GDDC Project Coordinator	50.0%
S	GDDC Project Manager	50.0%
S	GDDC Senior Project Manager	50.0%
S	GDDC Associate Technical Consultant	50.0%
S	GDDC Associate Technical Consultant I	50.0%
S	GDDC Associate Technical Consultant II	50.0%
S	GDDC Technical Consultant	50.0%
S	GDDC Senior Technical Consultant	50.0%
S	Project Coordinator	30.0%
S	Project Manager	30.0%
S	Senior Project Manager	30.0%
S	Program Manager	30.0%
S	Associate Technical Consultant	30.0%
S	Senior Technical Consultant	30.0%
S	Technical Consultant	30.0%
S	Field Solutions Engineer	30.0%
S	SAM Engineer	30.0%
S	Block Time Engineer	30.0%
S	Cloud (Rean)	30.0%
S	Cloud (Rean)	30.0%
S	Digital Business Principal Architect	30.0%
S	Digital Business Senior Architect	30.0%
S	Senior Digital Business Consultant	30.0%
S	Digital Business Consultant	30.0%
S	Digital Business Associate Consultant	30.0%

Product Maintenance, Installation, Support and Training

Warranty, Maintenance, Training and Installation are provided as set forth in Hitachi's Warranty and Maintenance and Support Terms found at

<https://www.hitachivantara.com/en-us/company/legal.html>.

Exhibit D: Price Schedule**Services**

The Hourly Rates shall not be increased on each annual anniversary thereof (each, an "Adjustment Date") during the Term of the Master Contract (including any extension option periods) by an amount greater than the lesser of two and half percent (2.5%) or the net increase in the Consumer Price Index ("CPI") over the most recently reported 12 month period, of the Hourly Rate amount then in effect. Vendor shall notify Customer of each increase by delivering a written statement setting forth the new amount of the Hourly Rates. Customer shall pay the new Hourly Rates from its effective date until the next annual increase.

Exhibit D: Price Schedule

Prompt Payment Discount

Master Agreement: 23009
Contractor Name: Hitachi Vantara LLC

All Awarded Bands

		in 30
		in 15, Net 30
		in 10, Net 30
X		Net 30
	Other (specify):	

HITACHI VANTARA LICENSE TERMS

These License Terms along with the terms attached to or incorporated by reference (together, the “**License Terms**”) apply to Software supplied to you as end user and licensee (“**You**”) and must be read together with Your supply agreement with Hitachi or a Hitachi authorized distributor or reseller partner for the provision of products and/or services from Hitachi (“**Agreement**”). References to “**Hitachi**” mean Hitachi Vantara LLC or its Affiliate, which may be Hitachi, Ltd., or any business entity controlled by or under the common control of Hitachi Vantara or Hitachi, Ltd.

1. Software Scope and Your Entitlement.

(a) Under these License Terms “**Software**” includes, as applicable, operating software contained within the equipment, firmware or stand-alone software.

(b) Your Software license rights are defined by Your “**Entitlement**” setting out the details of the Software licenses purchased by You, including license metric, duration, quantity, and other relevant information detailed in Your Order or other Hitachi-authorized confirmation of Your Order.

(c) Your Software license entitles You to receive: (i) the version of the Software stated in Your Entitlement and, if You are entitled to support, any no charge updates that Hitachi makes generally available to its customer base from time to time, including code or error corrections, service packs, maintenance releases, and minor releases; and (ii) applicable related “**Documentation**,” such as end user or technical manuals, published specifications and other standard Hitachi product documentation as updated by Hitachi from time to time.

2. License Grant.

(a) Provided that You are in compliance with these License Terms, Hitachi grants You a non-transferable, non-exclusive license to use the Software in object code format solely for Your internal business operations, pursuant to Your Entitlement and the Documentation.

(b) If You exceed Your Entitlement, You must pay to Hitachi or the Hitachi partner (as applicable) all additional license fees.

(c) Unless Hitachi notifies You otherwise, Software and Documentation will be delivered to You electronically. Hitachi may use license keys, tokens (i.e. prepaid mechanisms to meter user consumption) and any remote or other mechanisms to limit Your use of Software. If You receive a license key for a perpetual version of the Software, Your authorized use will be locked to that version except for any version number changes to the right of the version release decimal point that are effected by the provision of updates to You as described in Section 1(c) above.

(d) You may only use the Documentation in support of Your authorized use of the applicable Software.

(e) If You receive deliverables specified in a Statement of Work as part of Professional Services, upon receipt of payment, Hitachi grants You a worldwide, non-exclusive, royalty-free license to use the deliverables solely for Your internal use.

3. Software Evaluation Licenses. If Hitachi grants You the right to evaluate Software:

(a) Your authorized use of the Software under evaluation is limited solely to: (i) evaluating the performance and functionality of the Software either on a stand-alone basis or on the relevant equipment with which it is provided in a non-production environment; and (ii) evaluating the product’s performance in a non-production environment for Your internal business purposes.

(b) Your license to evaluate the Software will end upon the earlier of: (i) the expiry of the applicable product loan period; (ii) the termination of the product loan arrangement; or (iii) the expiry of the applicable license key.

(c) Any output of the Software that is created or otherwise arises pursuant to Your evaluation is deemed confidential and proprietary information of Hitachi. You must not duplicate such output, nor use it after the evaluation period ends, unless Hitachi grants to You a further license to the Software.

(d) Notwithstanding any other provision in the Agreement and to the extent permitted by applicable law and except for death and personal injury caused directly by Hitachi’s act or omission, Hitachi will not be liable for any actual or anticipated, direct, indirect,

special, incidental, consequential or other damages arising from the use of the Software and any services performed on the Software for such purposes, however caused, whether under contract, in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach or repudiation, even if Hitachi has previously been advised of the possibility of such damages. THE SOFTWARE IS PROVIDED FOR EVALUATION PURPOSES AND THE SOFTWARE AND ANY SERVICES PERFORMED ON OR USING THE SOFTWARE FOR SUCH PURPOSES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, NON-INFRINGEMENT, INTEROPERABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. Third Party Software.

(a) Except where Hitachi sub-licenses to You third party software embedded in Hitachi-branded Software under these License Terms:

(i) Subject to Section 5 below, Your authorized use and other license rights in any third party software that Hitachi supplies to You will be subject to the terms of the end user license agreement issued by the licensor of the third party software, or "EULA."

(ii) Except as expressly stated otherwise in the Agreement or in Your Entitlement, You will have no recourse against Hitachi or its Affiliates under any aforementioned EULA, and You are solely responsible to comply with such license terms. Without limiting the previous sentence, Hitachi provides third party software to You without warranties or support of any kind, and licenses, warranties, indemnities for intellectual property infringement claims and support for third party software will be governed by the licensor in the applicable EULA.

(b) When Hitachi is the licensor of third party software and the license requires it, the licensor of the third party software is an intended third party beneficiary of these License Terms and may enforce them against you.

(c) You will have no recourse against Hitachi or its Affiliates with respect to the actions or omissions of a third-party hosting service or hosting provider and its agents.

5. Open Source Software.

(a) You acknowledge that Software you license may include open source software and is subject to separate license terms set forth in the applicable open source software provided with the Software itself, or otherwise in the Documentation or at <https://www.hitachivantara.com/en-us/company/legal.html>.

(b) You must refer to the applicable EULA for open source software terms related to third party software. By accepting these License Terms, You are deemed to have accepted the terms of the applicable EULA.

6. Use Restrictions. Except to the extent that any of the following restrictions are prohibited by law (and, then only to the extent prohibited) or any such restricted actions are otherwise allowed under these License Terms or by written authorization from Hitachi, You must not:

- (a) disclose to any third party the results of Software or other product testing or benchmarking;
- (b) reconstruct the source code or underlying ideas, algorithms, file formats, or interfaces of the Software, such as by translating, decompiling, disassembling or reverse engineering;
- (c) create derivative works of or unbundle the Software;
- (d) allow use of the Software by a third party, such as by sublicensing, leasing, reselling, transferring, loaning, distributing, or allowing use on a service bureau, time sharing, hosted or cloud service model;
- (e) copy the Software, except as authorized in Section 7 below ;
- (f) make the Software available on any public network or allow access on an intranet unless it is restricted to authorized users;
- (g) remove or tamper with proprietary notices, labels, or marks on or in the Software;
- (h) use the Software or allow its use for any competitive development, testing, analysis, or marketing purposes;
- (i) use the Software via any communications network or by means of remote access;
- (j) use the Software licensed for a specific device, whether physical or virtual, on any other device; or
- (k) disable, attempt any work-around of, or otherwise interfere with any license keys, tokens, or other mechanisms in the Software.

7. Authorized Copies. Subject to the restrictions in Sections 6 and 8, You may copy the Software solely for Your internal backup or archival use so long as all proprietary marks, notices (including copyright notices) and labels are reproduced and included with each copy of the Software.

8. Software Transfers.

(a) You must not sublicense or transfer the Software to any other party without Hitachi's prior written consent. You may only use operating software on the equipment for which it was purchased and must not transfer other Software to new equipment without Hitachi's prior written consent.

(b) You may, however, transfer operating software to a third party solely with the related equipment, but You must ensure that the transferee agrees to the License Terms. The operating software is provided to the transferee on an "as is" basis, with no transfer or extension of any existing warranty or support arrangements. Upon such transfer, You must remove and destroy all copies of the operating software in Your possession or under Your control.

9. Verification Rights. Hitachi or its independent auditor may, upon reasonable notice to You, examine and audit Your records and systems to ensure Your compliance with these License Terms. The audit will be performed during normal business hours in a manner which does not unduly interfere with Your business operations. If the audit shows that You are using more copies of the Licensed Items than permitted, Hitachi may charge You additional license fees.

10. Termination Of Licenses. Subject to Section 3(b) above, Your license in the Software is effective until its termination or expiration. Your license in the Software will terminate if You are in breach of these License Terms, the Agreement, or if you fail to pay any portion of the applicable license fee and You fail to cure the breach in accordance with the terms of the Agreement. Upon termination or expiration of a license, You must destroy or disable all copies of the Software and Documentation.

11. Usage And Performance Data. Hitachi may collect and transfer data created by and derived from the products or services that Hitachi supplies to You, including analytics models and statistical and performance usage data, which does not include personal data or other identifying information. You grant to Hitachi, its Affiliates and their respective personnel a worldwide, royalty-free, non-exclusive license to use, copy, modify and sublicense such derived data for the purposes of product and/or service delivery, improvement and development and You agree and acknowledge that Hitachi may share that data with Affiliates or authorized partners at any time and without notifying You. Hitachi may use feedback You provide about the Software for its business operations.

12. Maintenance Materials and Software Support. The Hitachi Warranty, Maintenance and Support Terms located at <https://www.hitachivantara.com/en-us/pdf/legal/warranty-maintenance-support-online-terms.pdf> set out Hitachi's terms and conditions related to the support of Software.

HITACHI VANTARA WARRANTY MAINTENANCE AND SUPPORT TERMS

These Warranty and Maintenance and Support Terms along with the terms attached to or incorporated by reference (together, the **"WMS Terms"**) apply to and form part of Your supply agreement with Hitachi or a Hitachi authorized distributor or reseller partner (**"Hitachi Partner"**) for the purchase of Hitachi products and services (**"Agreement"**). References to **"Hitachi"** mean Hitachi Vantara LLC or its Affiliate, which may be Hitachi, Ltd., or any business entity controlled by or under the common control of Hitachi Vantara or Hitachi, Ltd.

These WMS Terms cover the supply of the maintenance, support and installation services as described in these WMS Terms (**"Services"**) to Hitachi products purchased under the Agreement (**"Products"**). If You purchase Products through a Hitachi Partner and Hitachi performs the Services for those Products, Section 18 of the WMS Terms (Additional Terms and Conditions) will apply.

1. Product Warranty.

(a) Hitachi warrants to You that during the applicable warranty period set out in the Service Descriptions (**"Warranty Period"**), the Products will function in accordance with the user or technical manuals, training materials, specifications, or similar documentation relevant to the Products (**"Documentation"**). For equipment, the Warranty Period will start on the first day of the calendar month immediately after the date the equipment has left Hitachi's distribution center or other delivery location. For software delivered electronically, the Warranty Period will start on the date that You are issued with the initial license key to download the software.

(b) If a Product does not substantially conform to the Documentation (**"Defect"** or **"Defective"**) then during the Warranty Period, you may make a warranty claim and subject to Section 6 of these WMS Terms, Hitachi will provide the Services that Hitachi considers in its sole discretion necessary to correct the Defect. To make a valid warranty claim, You must submit it in writing, including a full description of the Defect, to Your local Hitachi support contact center during the Warranty Period and within seven (7) days of discovering the Defect.

(c) If Hitachi considers in its sole discretion that the Services will not remedy the Defect, Hitachi will provide You with a refund for the Defective item upon Your prompt return of the item to Hitachi. These remedies comprise Hitachi's sole and exclusive liability to You and Your sole and exclusive remedy for a breach of the warranty in Section 1(a). This warranty does not apply to any third-party products subject to warranties under a separate third-party end user agreement nor to any Products that are outside the Warranty Period.

Hitachi may authorize third parties to provide Services to You (**"Authorized Providers"** or **"ASP"**). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

2. Service Descriptions and Plans. Provided that You are eligible for Services, have purchased a support plan and have paid Hitachi all applicable fees in full and subject to Section 3, Hitachi will provide the Services for the relevant Products as specified in Your Order to Hitachi or a Hitachi Partner in accordance with these WMS Terms. Service descriptions and further details for Your Service coverage are contained at <https://www.hitachivantara.com/en-us/pdf/specifications/hitachi-support-service-descriptions-and-deliverables.pdf> (**"Service Descriptions"**). The Service Descriptions form part of and are incorporated by reference into these WMS Terms. Hitachi may update the Service Descriptions from time to time and the updates will form part of, and will be incorporated into these WMS Terms, from the date of publication. Services may not be available in certain locations and may vary between locations, Product type or family, as specified in the Service Descriptions. Additional information regarding the Premium, Standard and Weekday Basic support offerings are available at <https://www.hitachivantara.com/en-us/services/customer-support.html>.

3. Service Partners. Hitachi may authorize third parties to provide Services to You (**"Authorized Providers"** or **"ASP"**). The Hitachi Partner that You order Products from is not authorized to provide Services unless they are also an ASP. ASPs may provide Services on behalf of Hitachi as its subcontractor or provide Services under a separate contract that You enter into directly with the ASP. Hitachi will not be responsible for the Services provided to You by an ASP under a separate contract with You, and You must look to that separate contract for your rights and remedies.

4. Equipment Maintenance Services. Subject to Section 6 of these WMS Terms, Hitachi equipment maintenance comprises the following:

- (a) supervision and installation of relevant engineering changes impacting the reliability of the equipment;
- (b) preventive maintenance, including necessary lubrication, adjustment or replacement of unserviceable parts; and
- (c) unscheduled maintenance, including repair, adjustment or replacement of unserviceable parts, as determined necessary by Hitachi and described in the hours of coverage under the applicable Plan.

5. Support Services for Software.

(a) Subject to Section 6 of these WMS Terms, Hitachi's software support comprises the support required for the ordinary use of the software in accordance with its Documentation, as provided through:

- (i) remote telephone support or support via the online portal ("**Hitachi Support Portal**") to: (1) identify and assist in resolving the Defect; (2) advise on installation of Updates; (3) and respond to minor software information queries.
- (ii) on-site intervention and the provision of Patches and Fixes, Service Packs, respectively at Hitachi's sole discretion; and
- (iii) the provision of access to Updates as and when Hitachi makes them generally available. Additional fees for Updates and/or Upgrades may apply. Access to Updates will be without additional charge where Hitachi provides the Updates on that basis to its general customer base.

"Patches and Fixes" mean changes made to the software by Hitachi that establish or restore substantial conformity with the Documentation. **Patches** refers to minor enhancements to the software that typically provide interoperability updates and **Fixes** refers to error corrections to the software. Errors must be reproducible.

"Service Packs" mean an accumulation of Patches and Fixes into a generally available package applicable to the latest generally available version of the software, v1.r1.r2. released at the same time as a new maintenance level and targeted at Hitachi's existing software install base.

"Updates" means subsequent releases and error corrections and/or minor functional enhancements for Software previously licensed by Hitachi.

"Upgrades" means releases that contain new additional features which significantly increase the basic functionality of the Product and for which Hitachi elects to charge separately to its customers generally.

(b) Hitachi only supports the operating software (including any license key enabled features/functionality embedded in the operating software) if Hitachi is also maintaining the equipment on which it is installed. Hitachi's obligation to provide software support is contingent upon the software being: (i) subject to a current and valid license; (ii) covered under a current and fully paid-up agreement for support services; and (iii) operated in a Hitachi-supported configuration, which may be detailed in the Documentation. If Your software license is terminated for any reason, Hitachi's obligations to provide support for the relevant software will cease.

6. Service Exclusions.

(a) Without limiting the operation of any other part of the WMS Terms, Hitachi is not obligated to provide any Services to You, or otherwise remedy any Defects in Products, and Hitachi is not responsible for any lost or damaged data due to:

- (i) accident, natural disaster, Your neglect of Products, or other use of Products outside of normal and ordinary use;
- (ii) Your failure to maintain an environmentally controlled data center with a suitable operating environment for the Products on terms that Hitachi specifies or otherwise agrees to, including failure of electrical power, air conditioning and humidity control, environmental contaminants, noise levels above 85dB(A) or unreasonable or excessive vibrations;
- (iii) Your failure to provide any of the required items under Sections 8(b) or 16 of these WMS Terms;
- (iv) Your failure to install or enable Hitachi to install any items that are necessary for the provision of the Services or to provide Hitachi with necessary service clearances;
- (v) any interference, alterations, additions, modifications or substitutions to any Product or to Your systems or operating environment connected to the Product that are made by You or on Your behalf, unless authorized by Hitachi;
- (vi) Your failure to make Updates required or recommended by Hitachi or to install the most recent mandatory Updates or Patches and Fixes for the software or any modification, enhancement or customization of software made by You or on Your behalf and not authorized by Hitachi;

(vii) any other act or omission of any person other than Hitachi or Hitachi's sub-contractor, which person includes an ASP or third party cloud service provider.

(b) Without limiting the operation of sub-section (a), the following services are also expressly excluded from the Scope of Services, and Hitachi will not be responsible for:

- (i) the maintenance or support of Products, including software versions, which have reached "End of Life" status, other than as expressly stated in these WMS Terms or in Hitachi's End of Life policy;
- (ii) the maintenance or support of Products that you are given for testing, proof of concept or evaluation purposes unless Hitachi explicitly agrees to provide all or some Services for such Products, at Hitachi's sole discretion;
- (iii) the maintenance or support of any third-party Products that are subject to a separate third-party support agreement; and
- (iv) the diagnosis and/or rectification of Defects that are not associated with the Products.

(c) If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be subject to the Service exclusions or otherwise "out of scope", Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

7. Field Replacement Units. Equipment may include components which are used or remanufactured, and regardless of this, the warranty in Section 1 of these WMS Terms will apply. Where Hitachi ships a sub-assembly of equipment components sealed at the factory and subject to replacement as a discrete unit at Your site ("**Field Replacement Unit**" or **FRU**") to replace a Product component that is removed during the supply of Services, the removed component will be the property of Hitachi, while the FRU will belong to You. For any removed components which: (i) You fail to return to Hitachi within fifteen (15) calendar days of the date of their removal; or (ii) are not covered by a then-current valid retention option, Hitachi may charge You a fee for those components at Hitachi's then-current spares price list. If You allow any person other than Hitachi or Hitachi's sub-contractor to break the factory seal on a FRU, this will void Your entitlement to the Product warranty or to otherwise receive Services entirely.

8. Remote Monitoring Services.

(a) The Services include remote diagnostic and monitoring services on eligible equipment, using Hitachi's proprietary remote monitoring tools and related Documentation, including but not limited to Hitachi Remote Ops, Hitachi Ops Center Clear Sight, and Hitachi SVOS cloud connector, as applicable ("**Remote Monitoring Services**"). All right, title and interest in the Remote Monitoring Services, and in all material that is used to provide those services, remain with Hitachi or its licensors and You do not get any licensed rights.

(b) Hitachi will not charge You for the supply of the Remote Monitoring Services, but You must provide and maintain, at Your cost, all telecommunications lines, monitor, PC, modem and access required for Hitachi to implement and provide the Remote Monitoring Services. In some instances, You will be required to opt-in to receive certain features of the Remote Monitoring Services. By opting-in, You agree to any updates to the Remote Monitoring Services. Remote diagnostic or monitoring services other than the Remote Monitoring Services may be provided for certain eligible equipment, which does not prompt any Service activity or call logging with Hitachi. For more details, please refer to the Service Descriptions.

(c) Hitachi will maintain the confidence of all passwords that You provide to Hitachi for the access and use of the Remote Monitoring Services. Hitachi may collect, use, and transfer telemetry data created by and derived from Remote Monitoring Services to its Affiliates for purposes of product and/or services monitoring, delivery, improvement, testing, and development.

(d) If You refuse to allow Hitachi to provide, fail to sign up for, or otherwise disable or interfere with the Remote Monitoring Services in any way, You acknowledge that Hitachi will be prevented from providing the remote diagnostic and monitoring services that are essential to the supply of Services and critical notifications, as applicable, including security breach notifications. In such circumstances, Hitachi will not be liable for any failure to meet service level response time commitments or other performance warranties, nor for any delays in providing the Services in accordance with these WMS Terms. Hitachi may use reasonable efforts to assist You with the rectification of any Defects that You notify Hitachi, but any efforts which are based on, or otherwise rely on assessments or information that You, or anyone on Your behalf has provided to Hitachi, will be at Your risk. Hitachi may charge You an additional fee to provide the Services in such circumstances.

(e) If the Agreement or Your separate services contract with an ASP or the supply of any Services is terminated or expires, You will allow Hitachi to disable the Remote Monitoring Services and de-install and remove all material on Your premises used by Hitachi to provide the terminated services. Hitachi may terminate access to the Remote Monitoring Services for systems that are not under valid support coverage.

9. Installation Services.

(a) Subject to Section 9(b), Hitachi will provide installation Services for the Products as set out in the relevant Order. Installation Services include only those Services identified in the Service Descriptions. Installation Services do not include any Service expressly identified as an exclusion in the relevant Order or the Service Descriptions, in addition to the exclusions in Section 6.

(b) Hitachi may provide on-site installation Services with respect to software, where Hitachi advises that the software must be installed by Hitachi, for an additional fee. Installation does not result in production ready implementation of the software; production ready software implementation is a professional service.

10. Termination and Renewal of Services.

(a) Without limiting any of Hitachi's other rights under the Agreement or applicable law, Hitachi reserves the right to terminate all or any of the Services at any time by written notice if You breach these WMS Terms or You otherwise infringe Hitachi's intellectual property rights. Any notice to terminate one or more discrete Service items will identify the specific item(s) to be terminated. If, in Hitachi's reasonable opinion, the termination of one or more discrete Service items adversely affects Hitachi's ability to provide other Services to You, then Hitachi may, in its sole discretion, terminate those other Services.

(b) Subject to Hitachi's rights of termination and suspension under the Agreement and applicable law, Hitachi will provide You with Services on the Products during the initial term and any applicable renewal terms as specified in the Hitachi or Hitachi Partner Quote accepted by You or as otherwise agreed and stated in the applicable Order ("**Service Period**"), provided You have paid Hitachi or the Hitachi Partner (as applicable) the fees for such services in full. The initial term for the Services will be non-cancellable and the applicable fees for that term will be non-refundable, unless the Quote as accepted by You or the Order (as applicable) states otherwise.

(c) If You do not renew the Services or if the Services are terminated, any subsequent reinstatement of Services may be subject to a reinstatement fee, based on Hitachi's current rates for reinstatement at the time, in addition to the then-current monthly fee for such Services.

(d) If any Services are not renewed or are terminated, Your rights, licenses and privileges under these WMS Terms cease and You must comply with Hitachi's directions to either remove and destroy all Hitachi proprietary and confidential information in Your possession or control, or to return such material and items to Hitachi at Your cost, subject to Section 16(e), and in any case, You will not use any such items in Your possession or control. Furthermore, You will not be relieved from Your payment obligations and any money due to Hitachi will become immediately payable.

11. Void Arrangements and Re-certification.

(a) You are not entitled to do any of the following without Hitachi's prior written consent: (i) move or relocate any part of the equipment (including moving any disks from one item of equipment to another); or (ii) allow any third party other than Hitachi authorised service personnel or representatives or a Hitachi ASP to perform any maintenance /support or repair any Product.

(b) You must not install software on any equipment, or a public cloud located in any countries that are prohibited by applicable export laws, restrictions and regulations of the U.S. Department of Commerce, the U.S. Department of Treasury and any other U.S. or foreign agency or authority.

(c) If any Services have been voided under Sections 11(a) or (b) or terminated under Section 10 or have expired and You wish to reinstate the Services for all or part of the affected Product, You must have the relevant Product re-certified by Hitachi or a Hitachi ASP, in order to continue receiving the Services. Hitachi will charge You its then current rates for re-certification and further repair necessary to restore the affected Product to good operating condition (normal wear and tear excepted).

12. Current and Superseded Software Support.

(a) Provided that You have valid support coverage and have paid Hitachi all applicable Fees in full, Hitachi will provide support as defined below, based on either the time since a Version was initially released ("**Time-based**") or the version ("**Version-based**").

(i) End of Normal Support for time-based obsolescence products listed on the Hitachi Vantara Time-based support lifecycle matrix located at https://knowledge.hitachivantara.com/Support/Information/More_Info/Time_Based_Support_Lifecycle_Matrix.

(1) Hitachi will provide Normal Support for a period no longer than eighteen (18) months from the date of release. If a release of software is older than eighteen (18) months, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the end of Normal Support period.

(2) Hitachi does not provide support past thirty (30) months for software on the Hitachi Vantara Time-based support lifecycle matrix.

(ii) End of Normal Support for version-based obsolescence products listed on the Hitachi Vantara Version-based support lifecycle matrix located at:

[https://knowledge.hitachivantara.com/Support Information/More Info/Version Based Support Lifecycle Matrix](https://knowledge.hitachivantara.com/Support%20Information/More%20Info/Version%20Based%20Support%20Lifecycle%20Matrix).

- (1) Hitachi will provide Normal Support (as defined below) for the current major version and one prior version of the software. If a release of software is older than one prior version from the current version, Hitachi will provide Limited Support (as defined below) for a twelve (12) month period following the general availability of the current version. Hitachi does not provide support for software releases that are older than two prior versions of the current version.
- (2) For certain Version-based software Hitachi will provide support as described at <https://support.pentaho.com/hc/en-us/articles/205789159-Pentaho-Product-End-of-Life>.

“Normal Support” means the development and provision of Service Packs, Updates and Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation.

“Limited Support” means the provision of existing Service Packs, and existing Patches and Fixes necessary to maintain the software in substantial conformance with the Documentation. Hitachi does not provide support for software releases that are older than two prior versions of the current version.

(b) Hitachi may refuse to supply You with Patches and Fixes for software if You could have solved the problem or Defect by upgrading to the latest Update of the current version.

13. End of Life Products. Please refer to Hitachi’s End of Life Policy located at <https://www.hitachivantara.com/en-us/pdf/datasheet/support-services-end-of-life-policy.pdf>. Please also refer to Your local Hitachi support contact center for any additional policies, which may apply to EOSL Products in Your country or region.

14. Maintenance Material. Hitachi may store diagnostic and/or tracking tools, including without limitation, Remote Monitoring Services software, firmware and related documentation, personal computers or notebooks, maintenance and other documentation (**“Maintenance Material”**) within the Products or elsewhere on Your premises as Hitachi considers necessary or convenient. Only Hitachi or Hitachi ASP personnel will be authorized to use the Maintenance Material. Maintenance Material will always remain Hitachi’s sole and exclusive property and to the full extent applicable, will be covered as Hitachi intellectual property and You do not get any licensed rights. Without limiting Your obligations under the Agreement, You must not use, access, modify, copy or relocate the Maintenance Material or allow any other person to do so and must return or allow Hitachi to de-install it upon Hitachi’s demand or upon the termination of the Services.

15. Transferability of Services. You must not assign or transfer any warranty, maintenance and/or support arrangement with Hitachi to any third party without Hitachi’s prior written consent. Unless Hitachi provides such consent, Hitachi will have no obligation to perform any Services to any third party.

16. Customer Responsibilities.

(a) To assist Hitachi to provide You with Services, You must provide Hitachi, Authorized Partners, and their respective personnel with prompt access to Your premises (as applicable) and make all necessary arrangements that are reasonably necessary to perform the Services, in Hitachi’s sole determination. If You cannot provide required access, Hitachi may be unable to provide you with the applicable services.

(b) You are responsible for the wireless, microwave, cable, or other physical data networks. You are responsible for managing and resolving issues related to the integrity of the network including physical implementation, signal quality, availability, identity and access, and related capabilities.

(c) Without limiting Sections 16(a) or 16(b) above or the terms of any applicable statement of work, if Hitachi requests, You will assign an appropriately qualified person(s) to be Your representative(s) for the receipt of the Services and to communicate with Hitachi on all Service-related matters, and Hitachi will be entitled to assume that the acts, conduct and decisions of such person(s) are authorized by, and are binding on You.

(d) For the commercial enterprise edition of the Data Integration (Pentaho™), You are entitled to the number of individuals designated by You to be Hitachi’s sole contacts for communicating with in connection with the Maintenance and Support Services, as You may update from time to time (**“Named Support Contacts”**) depending on the level of Maintenance and Support Services purchased from Hitachi. You may change such contacts by providing no less than two (2) weeks’ prior written notice to Hitachi and may increase Your

number of Named Support Contacts by paying Hitachi an additional fee. Only a Named Support Contact is entitled to access the Hitachi Support Portal. Each Named Support Contact must have full administrative access to all files, file systems and databases required for the operation of the Data Integration Product. Named Support Contacts may not forward requests from other parties and must be able to act as the primary contact for any Maintenance and Support Services issues. Each Named Support Contact may access Hitachi's online "Knowledge Base" through the Hitachi Support Portal. Named Support Contacts must be trained via training courses provided by Hitachi to You for the Big Data Products online or in person for a public group of attendees or on a custom basis.

(e) You retain responsibility for Your data and technical, logical and physical access controls to Your data. You must ensure that, prior to removal by or return to Hitachi for any reason, including any removed Product component(s) under Section 7, all data is removed from any Product or Hitachi property. Hitachi takes no responsibility for data remaining on any Product or Hitachi property that is removed by or returned to Hitachi. You agree to defend, indemnify and hold Hitachi harmless from and against all losses, damages, liabilities, judgments, settlements, costs and other expenses (including reasonable legal fees) that Hitachi incurs because of Your failure to comply with this sub-section (e).

17. Services for Additional Fees. If You request Hitachi to provide additional services not covered under these WMS Terms or any other services which Hitachi reasonable determines to be "out of scope", Hitachi may, at its sole discretion, agree to provide such services to You at Hitachi's then current rates or on a quoted, fixed fee basis.

18. Additional Terms and Conditions.

The following additional terms and conditions apply if, and only if, You do not have an Agreement in place with Hitachi or have purchased products and services from an authorized Hitachi Partner and Hitachi is providing you with the Services under these WMS Terms.

- (a) **Fees and Payment.** You will pay the fees and charges for the Services set out in Hitachi's invoice within thirty (30) days from the invoice date. Hitachi may charge You interest or suspend delivery of Services if payments from You are overdue. You must also pay for any taxes arising from the transaction under these WMS Terms, irrespective of whether these taxes are included in Hitachi's invoices.
- (b) **Limitation of Liability.** Except for liability arising from: death, bodily injury or damage to tangible property arising from Hitachi's negligent acts or omissions, and for willful misconduct, in all cases and to the extent not prohibited by applicable law: (a) Hitachi's maximum aggregate liability for all claims relating to these WMS Terms, whether contractual, non-contractual or pre-contractual, will be limited to fifty thousand US dollars (U.S. \$50,000) or the monetary equivalent in the currency of the Local Service Jurisdiction (as defined below), calculated on the date of the claim; (b) Hitachi will not be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of these WMS Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders or other economic advantage), however they arise, whether contractual, non-contractual or pre-contractual, and even if Hitachi has previously been advised of the possibility of such damages. These limitations and exclusions apply, even if an exclusive remedy provided for in these WMS Terms fails of its essential purpose.
- (c) **Data Privacy.** If the parties exchange any information that relates to an identified or identifiable individual that is considered "Personal Data" as part of the Services, the parties will take all reasonably necessary steps to ensure that such Personal Data is transferred, processed, and handled in compliance with each party's obligations under all applicable data protection laws. You will at all times remain the Data Controller (namely, the entity who is responsible to determine the purposes and means of processing the data) of any Personal Data that You provide to Hitachi. Hitachi will only use such Personal Data for any purposes necessary to carry out the supply of Products and Services under an Order. Where applicable, the most current Data Privacy and Security Terms at <https://www.hitachivantara.com/en-us/pdf/legal/data-privacy-security-terms-customer.pdf> are incorporated and form part of this Agreement.
- (d) **Governing Law.** Unless it is agreed in writing between the parties that the laws of another jurisdiction will apply, the laws of the Local Service Jurisdiction will apply to these WMS Terms and the venue for any litigation will be the one designated through the application of the Local Service Jurisdiction (as defined below). To the extent allowed in the applicable jurisdiction, the United Nations Convention on Contracts for the international sale of goods and its implementing legislation will not apply to these WMS Terms. "**Local Service Jurisdiction**" means the jurisdiction of the state, province or country in which the Hitachi entity that sold You the Product is located.
- (e) **Termination.** A Party may terminate any Maintenance and Support Services hereunder if the other Party: (i) commits a material breach of these WMS Terms and does not remedy that breach within thirty (30) days of written notice to do so; or (ii) becomes or threatens to become insolvent.

- (f) **Force Majeure.** Neither party will be liable for performance delays nor for non-performance (including suspension) due to causes beyond its reasonable control, except for payment obligations.
- (g) **Contributory Liability.** Hitachi will not be liable to You for the failure or non-performance of any obligation required of Hitachi hereunder, to the extent that such failure or non-performance is caused by Your act or omission, or the act or omission of Your personnel or any other person acting on Your behalf. You agree to take all steps and measures available to You to mitigate and minimize the losses, costs and damages arising from any failure or non-performance of Hitachi, irrespective of the nature and extent of Your contribution.
- (h) **Conflict of Terms.** If there is a conflict between the terms of the contract that You have with Partner and these WMS Terms, then to the full extent that those terms impact on these WMS Terms, these WMS Terms will prevail with respect to that conflict.