



Attachment 09

PROPOSED DEVIATIONS TO SAMPLE MASTER AGREEMENT

The Lead State may, but is not obligated to, consider proposed deviations to Attachment 04, Sample Master Agreement.

Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.

Offeror-specific deviations to the Sample Master Agreement may be proposed as part of Offeror's proposal in this attachment but are strongly discouraged. The quantity, breadth, and nature of deviations proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive deviations, or proposing deviations upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.

Offeror's Proposed Deviations. (Check one of the below.)

- ☐ Offeror has no proposed deviations to Attachment 04, Sample Master Agreement.
- ☒ Offeror proposes the deviations set forth in the table below and will submit with Offeror's proposal a redlined copy of Attachment 04, Sample Master Agreement incorporating each proposed deviation. Offeror understands, acknowledges, and agrees to comply with the following:
 - The Lead State will not consider any proposed deviation that:
 - Is not submitted in this attachment;
 - Is not accompanied by an explanation as required in this attachment;
 - Is not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal;
 - Merely references another document or a URL; or
 - Modifies the NASPO ValuePoint administrative fee.
 - Offerors may propose additional terms but must include them in this attachment and must clearly identify where any terms conflict with the Sample Master Agreement.
 - If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment 04, Sample Master Agreement and Offeror's accepted deviations thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.

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- Each of the following fields **must** be completed for each proposed deviation to the Sample Master Agreement:
 - **Sample Master Agreement Section Reference:** The page, section, or paragraph in the Sample Master Agreement that is the subject of Offeror's proposed deviation.
 - **Sample Master Agreement Language:** The language in the Sample Master Agreement that the Offeror is proposing to modify.
 - **Proposed Changes and Alternate Language:** The Offeror's proposed changes to the Sample Master Agreement language including, if applicable, Offeror's proposed alternate language.
 - **Justification for Proposed Change:** Offeror's justification for the proposed change.
 - **Risk and Benefits of Acceptance:** Offeror's analysis of the risk and benefits to the Lead State, Participating Entities, or Purchasing Entities—including quantifiable costs or cost savings—if Offeror's proposed change is accepted by the Lead State.

Sample Master Agreement Section Reference	Sample Master Agreement Language	Proposed Changes and Alternate Language	Justification for Proposed Change	Risk and Benefits of Acceptance
5.2.1., NASPO ValuePoint Fee	"The NASPO ValuePoint Administrative Fee must 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 must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less <u>returns, credits,</u> any charges for taxes or shipping)."	Changes incorporate Master Agreement #8496 current Admin Fee calculation and payment practices.	Risk: None, as there is no impact to the Admin Fee percentage paid. Benefits: Clarifies and standardizes Contractor Admin Fee calculation with current contract payment practices without impacting substantive Admin Fee terms.
5.3.1., Sales Data Reporting	"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	"NASPO ValuePoint, <u>subject to Section 14.2.2, Non-Disclosure terms and conditions,</u> shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty	Changes clarify NASPO ValuePoint's commitment to comply with terms presented in Section 14.2.2.	Risk: None. Benefits: Changes balance application of Non-Disclosure requirements and confidential information mandate to the benefit of all parties.

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	use reports, data, and information provided under this section."	free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section."		
5.3.4., Sales Data Crosswalks (last two sentence)	"... Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog change."	"... Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog <u>and aligned product category(ies)</u> change. <u>In all such instances, catalog product and product category alignment rests solely with Contractor.</u> "	Changes clarify roles and responsibilities for Contractor catalog product management (adding new product, removing product no longer available) and product category alignment with Contractor's catalog offering.	Risk: None. Benefit: Removes potential ambiguity regarding additions and deletions of product to Contractor's catalog offering and discloses Contractor's ability to adjust product category alignment, often to improve online customer experience.
6.1., Pricing.	"Pricing. The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity."	"Pricing. The prices <u>discount percentages</u> contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed <u>price</u> minimum <u>discount</u> to any Purchasing Entity."	The State's response to Q&A in Amendment 1, provided the language used to modify this section.	Risk: None. Benefit: Benefit: Clarifies guidance specific to dynamic contract pricing and static (fixed/firm) discounts applied.
6.1.1., Pricing.	"All prices and rates must be guaranteed for the term of the Master Agreement."	"All prices and rates <u>discount percentages</u> must be guaranteed for the term of the Master Agreement."	The State's response to Q&A in Amendment 1, provided the language used to modify this section.	Risk: None. Benefit: Clarifies guidance specific to dynamic contract pricing and static (fixed/firm) discounts applied.
6.1.3., Pricing.	"Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement	" Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement	The State's response to Q&A provided the following clarifying guidance specific to price and/or discount term adjustments. "List Price may change throughout	Risk: None. Benefit: Clarifies guidance specific to the dynamic nature of contract pricing and fixed/firm application of contract discounts.

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	will not be effective unless approved in writing by the Lead State.”	<u>that impacts contract pricing or discount terms</u> will not be effective unless approved in writing by the Lead State <u>and Contractor.</u> ”	the contract term but the discount percentage is firm for the contract period.” And, “The discount percentage is firm for the contract term, no other pricing is expected to be held firm.”	
7.8. 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.”	“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. <u>In all instances where additional federal requirements apply, Contractor will be provided advanced notice and the opportunity to assess whether Contractor can comply</u> ”	Contractor requests advanced notice if additional federal requirements are applied to any contract purchase to ensure Contractor can comply.	Risk: None. Benefit: By providing notice of additional requirement and by obtaining Contractor’s affirmation of compliance, both Purchasing Entities and Contractor benefit.
8.1., Shipping Terms	“All deliveries, except as noted below, will be F.O.B. destination, freight	“All deliveries, except as noted below <u>or as otherwise agreed to</u>	Modifications retain current sample contract terms while providing Contractor	

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	pre-paid, with all transportation and handling charges paid by the Contractor."	<u>in writing by the parties</u> , will be F.O.B. destination. freight pre-paid, with all transportation and handling charges paid by the Contractor <u>Standard ground freight shipments are paid by Contractor on all Catalog Products orders to Participating Entity's place of business within the contiguous United States."</u>	and Participating Entities the option to adjust shipping and delivery terms, should the facts specific to an opportunity require.	
8.1.1., Shipping Terms	"Additional shipping charges for oversized or overweight items that require special shipping are allowed but must be identified as part of the ordering process."	"Additional shipping charges imposed by the freight carrier related to the shipment shall be paid by Participating Entity, unless otherwise agreed to in writing by Contractor for oversized or overweight items that require special shipping-Additional shipping charges are allowed but must be identified as part of the ordering process <u>prior to purchase."</u>	Changes made to terms ensure transparency with respect to additional freight charges and refines terms based on current carrier business practices. Additional freight charges assessed by the carrier for HAZMAT, Oversized or Special Handling, will be provided to the Participating Entity buyer prior to purchase.	Risk: None. Benefit: Clarifies for all parties what type of shipping charges apply to what type of product shipped and requirement to inform Purchasing Entities of charges prior to purchase.
10.2., Warranty	No change to Sample Master Agreement language.	Proposed additional language. <u>Guarantee and Product Warranty.</u> <u>If Purchasing Entity is not satisfied with a product for any reason, Contractor will promptly provide an exchange or refund if the product is returned within 30 days of date of invoice, with proof of purchase from Contractor.</u>	Additional language added to existing Warranty terms clarify roles and responsibilities associated with warranty matters.	Risk: None. Benefit: Additional information provided complements existing warranty terms while providing Purchasing Entities additional insight in warranty specific roles and responsibilities as well as process to employ should a warranty related matter arise.

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LIMITED
WARRANTY
ALL PRODUCTS
SOLD ARE
WARRANTED BY
CONTRACTOR
FOR USE IN
GOVERNMENT.
CONTRACTOR
WARRANTS
PRODUCTS
AGAINST DEFECTS
IN MATERIALS AND
WORKMANSHIP
UNDER NORMAL
USE FOR A
PERIOD OF ONE
(1) YEAR AFTER
THE DATE OF
INVOICE FROM
CONTRACTOR.
UNLESS
OTHERWISE
STATED.
CONTRACTOR
MAY, AT ITS
OPTION:
(i) REPAIR;
(ii) REPLACE; OR
(iii) REFUND THE
AMOUNT PAID BY
THE PURCHASING
ENTITY.
PURCHASING
ENTITY MUST
RETURN THE
PRODUCT TO THE
APPROPRIATE
CONTRACTOR
BRANCH OR
AUTHORIZED
SERVICE
LOCATION, AS
DESIGNATED BY
CONTRACTOR.
SHIPPING COSTS
PREPAID.
CONTRACTOR'S
REPAIR,
REPLACEMENT,
OR REFUND OF
AMOUNTS PAID BY
CUSTOMER FOR

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THE PRODUCT, SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY. WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY. EXCEPT AS SET FORTH HEREIN AND WHERE APPLICABLE, CONTRACTOR DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION. CONTRACTOR EXPRESSLY DISCLAIMS ANY LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES TO THE EXTENT PERMISSIBLE. CONTRACTOR'S LIABILITY IN ALL EVENTS IS LIMITED TO THE PURCHASE PRICE PAID FOR THE PRODUCT THAT GIVES RISE TO ANY LIABILITY.

Warranty Product Return. Before returning any

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		product, Purchasing Entity may contact Contractor either by logging on to grainger.com/returns or calling Contractor's Customer Care at 1-800-GRAINGER (472-4643). Proof of purchase is required in all cases.		
11.3., License of Pre-Existing Intellectual Property	“Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it (“Pre-existing Intellectual Property”). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.”	“Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it (“Pre-existing Intellectual Property”). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property. In all such instances, Contractor's ability to convey this license is limited by the terms of the license accompany the product purchased ”	Changes to terms reflect limitations associated with purchasing pre-existing intellectual property captioned as commercial off the shelf product. Contractor is not positioned to expand the scope of license included in standalone and/or imbedded product.	Risk: None. Benefit: Clarifies scope of license to pre-existing intellectual property Contractor can convey to Purchasing Entities.
12.1., General Indemnification	“The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead	“The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead	Grainger acknowledges and accepts its indemnity responsibilities to the extent third party	Risk: None. Benefit: Clarifies indemnity roles and responsibilities

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	State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement."	State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property <u>to the extent</u> arising from any <u>negligent</u> act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement."	claims are the result of Grainger, its employees, etc., negligence.	applicable to Grainger and Grainger aligned employees, vendors, etc.
14.3.3., Assignments / Subcontracts	"The contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire contract whether or not subcontractors are used. The Lead State shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor. All references to the contractor shall be construed to	"The <u>e</u> Contractor is permitted to make subcontract(s) with any other party <u>ies including suppliers, vendors, and service providers ("Other Party or Parties")</u> , for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire contract whether or not <u>subcontractors-Other Parties</u> are used. The Lead State shall not be involved in the relationship between the <u>prime e</u> Contractor and the <u>subcontractorOther Parties</u> . Any issues that arise as a result of this relationship shall be resolved by	Changes clarify Contractor responsibilities when entering subcontracts with suppliers, vendors, service providers, etc. for performance of work or services under the terms of this Master Agreement.	Risk: None. Benefits: All parties to this agreement will benefit from clarifications and additional specificity made to this section when the Master Agreement is operationalized.

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	encompass both the contractor and any subcontractors of the contractor."	the prime e Contractor.-All references to the contractor shall be construed to encompass both the contractor and any subcontractors of the contractor."		
14.8.2., Defaults and Remedies	"...Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement."	"...Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement."	Reference to liquidated damages removed as liquidated damages and the extent applicable are not defined in the Master Agreement.	Risk: None. Benefit: All parties will benefit from the removal of a terms not applicable to the scope of this contract.
14.8.3.3., Defaults and Remedies	"Assessment of liquidated damages as provided in this Master Agreement;"	"Assessment of liquidated damages as provided in this Master Agreement;"	Reference to liquidated damages removed as liquidated damages and the extent applicable are not defined in the Master Agreement.	Risk: None. Benefit: All parties will benefit from the removal of a terms not applicable to the scope of this contract.
14.14., Survivability	"Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof."	"Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall, <u>subject to Term of Purchase terms in Section 7.5. of this Master Agreement,</u> continue to apply to all	Changes clarify Survivability terms and align these terms with Term of Purchase terms in Section 7.5 of this Master Agreement.	Risk: None. Benefit: Alignment of terms specific to post termination activity under these Master Agreement terms adds value and clarity to Purchasing Entity contract activity and Contractor contract performance.

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		Participating Addenda and Orders until the expiration thereof."		
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[Add additional rows as needed.]