



**STATE OF CONNECTICUT**  
*DEPARTMENT OF ADMINISTRATIVE SERVICES*  
**PROCUREMENT DIVISION**  
450 Columbus Boulevard, Hartford, CT 06103

***CONTRACT AMENDMENT #1 – 23PSX0238***

**DESCRIPTION:**

Amendment #1 issued and effective August 2, 2024.

- Avive contact information update to:

Carly Miller

Telephone Number: 415-960-3959

Email address: [contracts@avive.life](mailto:contracts@avive.life)

- Updated Contract Instructional Document.

All terms and conditions not otherwise affected by this amendment remain unchanged and in full force and effect.

**Department of Administrative Services**  
Arlene Watson-Paulin  
Contract Specialist  
August 2, 2024

**23PSX0238 – Automatic External Defibrillator (AEDs) Units and Accessories**  
**Contract Instructional Document**

The Contract Award #23PSX0238 is the Department of Administrative Services (DAS) assigned contract number to be utilized by Client Agencies against purchases for NASPO ValuePoint (Oklahoma State - EV00000354) FDA approved - Automatic External Defibrillator (AED's) Units and Accessories.

NASPO ValuePoint will retain full ownership of the Master Agreement and all amendments will be announced by NASPO ValuePoint. DAS Procurement will issue an amendment with all updates to the contract.

Client Agency must contact the Contractor to establish an account before issuing any purchase orders.

Client Agencies must reference EV00000354 on all purchase orders along with Contract Award #23PSX0238.

Contractor List:

**23PSX0238AA Avive Solutions Inc.                      Automatic AEDs Units and Accessories**

**Contractor contact information:**

**CORE VENDOR ID#0000226435**

Avive Solutions, Inc

185 Valley Drive

Brisbane, CA 94005-1340

**Contact Carly Miller**

**Telephone #: 415-960-3959   Email: [contracts@avive.life](mailto:contracts@avive.life) website: [www.avive.life](http://www.avive.life)**

Shipping terms: F.O.B. destination.

Payment Terms: 30 days

Item & Pricing: see Exhibit C – Cost

Estimated Delivery Time: 1-2 weeks for order < 100 AED units. 3-4 weeks for orders of 100+ AEDs

**Participating Addendum**  
**PSX #23PSX0238**

This Participating Addendum is made by and between the State of Connecticut acting by its Department of Administrative Services (“DAS” or “Participating Entity”), in accordance with sections 4a-2, 4a-51 and 4a-53 of the Connecticut General Statutes, and Avive Solutions, Inc (“Contractor”).

The Contractor and DAS agree as follows:

1. DAS and the Contractor shall be bound by the terms of a certain National Association of State Procurement Officials (“NASPO”) master agreement number EV00000354 entered into between the Contractor and State of Oklahoma dated 02/16/2024 (the “Master Agreement”) for the purchase of Automated External Defibrillator (AED) & Accessories.
2. The Master Agreement, attached to this Participating Addendum as Exhibit 1 and as modified by this Participating Addendum, binds DAS and Contractor, but only for purposes of enabling DAS to contract for Automated External Defibrillator (AED) & Accessories from Contractor.
3. The Contractor and DAS are not bound to any modifications to the Master Agreement dated after the date of this Participating Addendum.
4. For purposes of this Participating Addendum, references in the Master Agreement to State of Oklahoma shall be interpreted to mean DAS.
5.
  - A. This Participating Addendum and the Master Agreement shall be read to be consistent and complementary. Any ambiguity, conflict or inconsistency between them shall be resolved by giving priority to this Participating Addendum.
  - B. To the extent that any provisions in the Master Agreement and this Participating Addendum address the same or substantially the same subject matter, the provisions in this Participating Addendum shall prevail and replace in their entirety the provisions in the Master Agreement addressing the same or substantially the same subject matter. To the extent any provisions in the Master Agreement are titled the same or similarly titled as a provision in this Participating Addendum, the provisions in this Participating Addendum replace, in their entirety, the same or similarly titled provisions in the Master Agreement.
  - C. Provisions in the Master Agreement specifically deleted or specifically modified are listed in Section 6 below. No other terms in the Master Agreement apply to DAS or the Client Agency, including terms listed or referenced in any solicitation documents or in the Contractor’s response to any solicitation documents.

**Participating Addendum**  
**PSX #23PSX0238**

6. A. The following sections of the Master Agreement are deleted in their entirety:

- (i) Article III, Section 5.2.2 (NASPO ValuePoint General Terms and Conditions), **State Imposed Fees.**
- (ii) Article V. Section 6.3 (NASPO ValuePoint General Terms and Conditions), **Leasing or Alternative Financing Methods.**
- (iii) Article XIV, Sections 14.1 thru 14.2.2 (NASPO ValuePoint General Terms and Conditions), **Records Administration and Audit.**
- (iv) Article XIV, Section 14.7 (NASPO ValuePoint General Terms and Conditions), **Cancellation.**
- (v) Article IV. (Additional Requirements), Section (A) (Distributors), of the Master Agreement.
- (vi) Category II: AED Units\_Semi Automated of Exhibit C-Cost of the Master Agreement.

B. The following sections of Exhibit B of the Master Agreement are modified as follows:

- (i) Subparagraph A of Section II. Master Agreement Deliverables of Exhibit B: Scope of Work of the Master Agreement is amended by deleting the words “Category II: Semi-automated” so that the new sentence reads as follows: “AED Units that are approved by the FDA: Category 1: Fully Automated.”
- (ii) Subparagraph B of Section II. Master Agreement Deliverables of Exhibit B: Scope of Work of the Master Agreement is amended by deleting subclause (i) so that the new sentence reads as follows:  
“A list of the most used consumable and accessories have been identified below:
  - i. Adult Pads (electrodes)
  - ii. Pediatric Pads (electrodes)
  - iii. Carrying Cases
  - iv. Wall Mount Kits
  - v. Fast Response Kits”
- (iii) Paragraph C. Value-Add products and services of Exhibit B: Scope of Work of the Master Agreement is amended by adding the words “See Exhibit C-Cost Value-Add.”

## **Participating Addendum**

**PSX #23PSX0238**

7. The Contractor shall comply with the Connecticut Standard Terms, which are attached as Exhibit 2. As used in this Participating Addendum, the capitalized word "Contract" is deemed to refer to this Participating Addendum and its exhibits.
8. To the extent that DAS or the Client Agency fails to meet its obligations under this Participating Addendum, the Contractor's exclusive remedies will be to seek redress in accordance with applicable Connecticut law, including the claims commissioner process set forth in Chapter 53 of the Connecticut General Statutes concerning claims against the State.
9. Nothing in the Master Agreement as modified by this Participating Addendum shall be construed as a modification, compromise or waiver by DAS or the State of Connecticut of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State of Connecticut or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Master Agreement as modified by this Participating Addendum. To the extent that this section conflicts with any other section in the Master Agreement, this section shall govern.
10. Any Purchasing Entity or Client Agency may issue purchase orders against this Participating Addendum. "Purchasing Entity" or "Client Agency" means any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of Connecticut, non-profit organization organized in the State of Connecticut and any entity identified in Conn. Gen. Stat. Sec. 4a-54, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms and conditions of, this Participating Addendum.

### 11. Primary Contacts

#### Participating Entity

Name: State of Connecticut, Department of Administrative Services, Procurement Division

Address: 450 Columbus Blvd, S1202, Hartford, CT 06103

Contact: Arlene Watson-Paulin

Telephone: 860-713-5237

Email: [arlene.watson-paulin@t.gov](mailto:arlene.watson-paulin@t.gov)

#### Contractor:

Name: Avive Solutions, Inc.

Address: 185 Valley Drive, Brisbane, CA 94005-1340

Contact: Micah Bongberg

**Participating Addendum**  
**PSX #23PSX0238**

Telephone: 415-738-7935 ext. 50

Email: [micah@avive.life](mailto:micah@avive.life)

12. Orders

Any order placed by a Client Agency shall be deemed to be a sale under and governed by the prices and terms of Exhibit 1, Master Agreement and this Participating Addendum.

All purchase orders shall contain the references "Master Agreement No. EV00000354" and "DAS Contract No.23PSX0238AA."

The parties are executing this Participating Addendum on the date below their respective signatures.

Avive Solutions, Inc.

By:   
Printed Name: Micah Bongberg  
Title: Chief Commercial Officer  
Date: 5/15/2024

STATE OF CONNECTICUT  
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: Arlene Watson-Paulin Digitally signed by Arlene Watson-Paulin  
Date: 2024.05.16 07:49:36 -04'00'  
Printed Name: Arlene Watson-Paulin  
Title:  
Date:

APPROVED AS TO FORM  
STATE OF CONNECTICUT  
Office of the Attorney General

BY: \_\_\_\_\_

Name: Jeffrey Zeman  
Title: Assistant Attorney General  
Date:

**Exhibit 1**  
**Master Agreement**



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# **Procurement Master Agreement**

## **Automated External Defibrillator (AED) & Accessories**

**Issued by**

**The State of Oklahoma**

**In collaboration with**

**NASPO Value Point**



The Manufacturer identified below is hereby notified that a contract is being awarded in connection with solicitation number EV00000354, Oklahoma Statewide SW0300, which opened November 17, 2023.

**Now, Therefore**, in consideration of the foregoing and mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties have caused the Master Agreement to be duly executed and agree to terms contained herein.

**STATE OF OKLAHOMA  
by and through the  
OFFICE OF MANAGEMENT AND  
ENTERPRISE SERVICES**

**Avive Solutions, Inc.**

By: *Amanda L. Otis*  
Amanda L. Otis (Feb 16, 2024 10:09 CST)  
Name: Amanda Otis  
Title: State Purchasing Director  
Date: 02/16/2024

By: *Micah Bongberg*  
Micah Bongberg (Feb 15, 2024 16:19 PST)  
Name: Micah Bongberg  
Title: Chief Commercial Officer  
Date: 02/15/2024

**Reviewed & approved by**

OMES Legal: *Tim Tuck*  
Tim Tuck (Feb 16, 2024 10:06 CST)  
Date: 02/16/2024



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**Procurement Master Contract**

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## Procurement Master Contract

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### Contract Summary

This State of Oklahoma Statewide Contract (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and AVIVE SOLUTIONS INC. (“Supplier”) and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is two (2) years and there are three (3) additional one-year period options to renew the Contract.

#### Purpose

The purpose of this contract is to have established a competitive contract for use by participating entities to obtain FDA approved Automatic External Defibrillator (AED) Units and Accessories. As more particularly described in certain Contract Documents found herein. This contract will be made available to all levels of state, local and county government agencies as well as other public agencies authorized to utilize this contract. A contract may be awarded to one or more AED manufacturers.

This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to manufacturer.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
  - 2.1. Exhibit A, NASPO ValuePoint Master Terms and Conditions
  - 2.2. Exhibit B, Scope of Work
  - 2.3. Exhibit C, Cost
3. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.



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## Procurement Master Contract

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### EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

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#### Definitions:

- 1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 **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.
- 1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. 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.
- 1.8 **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or



other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

- 1.10 Participating Entity** means a state (as well as the District of Columbia and US 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.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Product or Products and Services** 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 Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

## **I. Term of Master Agreement**

- 2.1 Initial Term.** The initial term of this Master Agreement is for two (2) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period 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 will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.



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## II. Order of Precedence

- 3.1 **Order.** Any Order placed under this Master Agreement will consist of the following documents:
  - 3.1.1 A Participating Entity's Participating Addendum ("PA");
  - 3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;
  - 3.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
  - 3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
  - 3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will 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.
- 3.3 **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

## III. Participants and Scope

- 4.1 **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2 **Applicability of Master Agreement.** 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, subject to Section III. For the purposes 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



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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.

- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and 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.



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- 4.4 Obligated Entities.** 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. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the 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; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and 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.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, 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 and as the Participating Entity has in the Participating Addendum, 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.

**4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the 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.

**4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity'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.

#### **IV. NASPO ValuePoint Provisions**

**5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

#### **5.2 Administrative Fees**

**5.2.1 NASPO ValuePoint Fee.** 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 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 is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

**5.2.2 State Imposed Fees.** Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state,



Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

### 5.3 NASPO ValuePoint Summary and Detailed Usage Reports

**5.3.1 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”). Contractor is responsible for reporting all sales made under this contract, whether those sales are made by distributors or the manufacturer directly. 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.

**5.3.2 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.

**5.3.3 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.

**5.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.

**5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which 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.

**5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

**5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and



participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

- 5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third- party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.
- 5.5 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the 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 execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead



State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

- 5.6 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.

## **V. Pricing, Payment & Leasing**

- 6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
- 6.1.1** All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 30 days prior to the effective date.
- 6.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
- 6.1.4** No retroactive adjustments to prices or rates will be allowed.
- 6.2 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 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 or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 6.3 Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of



Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

## VI. Ordering

- 7.1 **Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 **Quotes.** Purchasing Entities may define entity-specific 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.
- 7.3 **Applicable Rules.** 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 and/or services contemplated by this Master Agreement.
- 7.4 **Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 **Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
  - 7.5.1 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.
  - 7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.



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- 7.5.3** 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.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall 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 in any manner inconsistent with this Master Agreement's terms.
- 7.5.5** Orders for any separate indefinite quantity, task order, 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.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;
- 7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
- 7.6.6** A not-to-exceed total for the products or services being ordered; and
- 7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 7.7 Communication.** All communications concerning administration of Orders placed must 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.
- 7.8 Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to Title 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.

## **VII. Shipping and Delivery**

- 8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.
  - 8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
- 8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. 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 will be shipped without charge.
- 8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.



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## IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
  - 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.
  - 9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
  - 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the



Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

- 9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
- 9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.
- 9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

## **X. Warranty**

- 10.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.
- 10.2 Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 10.3 Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor



will refund the full amount of any payments that have been made.

**10.4 Rights Reserved.** 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 equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**10.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX.

## **XI. Product Title**

**11.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

**11.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

**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.

## **XII. Indemnification**

**12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead 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.



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- 12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").
- 12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
  - 12.2.1.2** specified by the Contractor to work with the Product;
  - 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
  - 12.2.1.4** reasonably expected to be used in combination with the Product.
- 12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the



Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

- 12.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### **XIII. Insurance**

- 13.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 13.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of 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.
- 13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance 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 and \$2 million general aggregate;
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state 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.

- 13.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. 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.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

#### **XIV. General Provisions**

##### **14.1 Records Administration and Audit**

- 14.2** 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 will adequately reflect performance and administration of payments and fees. 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, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This



right will 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 Master 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.

**14.2.1** 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.

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

#### **14.3 Confidentiality, Non-Disclosure, and Injunctive Relief**

**14.3.1 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.

**14.3.1.1** 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").

**14.3.1.2** 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.

**14.3.1.3** 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.

- 14.3.2 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.
- 14.3.2.1** 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.
- 14.3.2.2** 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.

**14.3.2.3** 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.

**14.3.2.4** 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.

**14.3.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary 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.

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

**14.3.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, 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 this Master Agreement. 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.

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

**14.4 Assignment/Subcontracts**

**14.4.1** 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.

**14.4.2** 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.

**14.5 Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall 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.

**14.6 Independent Contractor.** Contractor is an independent contractor. Contractor has 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 shall not hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

**14.7 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation



may be in whole or in part. Any cancellation under this provision will 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.

- 14.8 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 acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**14.9 Defaults and Remedies**

- 14.9.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 14.9.1.1** Nonperformance of contractual requirements;
  - 14.9.1.2** A material breach of any term or condition of this Master Agreement;
  - 14.9.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
  - 14.9.1.4** Institution of proceedings under any bankruptcy, insolvency, 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
  - 14.9.1.5** Any default specified in another section of this Master Agreement.
- 14.9.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) 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 will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

- 14.9.3** 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:
- 14.9.3.1** Any remedy provided by law;
  - 14.9.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
  - 14.9.3.3** Assessment of liquidated damages as provided in this Master Agreement;
  - 14.9.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
  - 14.9.3.5** Suspension of Contractor's performance; and
  - 14.9.3.6** Withholding of payment until the default is remedied.
- 14.9.4** 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 an 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 will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

**14.10 Waiver of Breach.** Failure of the Lead State, Participating Entity, or



Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. 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 will 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, any Participating Addendum, or any Purchase Order.

**14.11 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 public procurement or contracting 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.

**14.12 No Waiver of Sovereign Immunity**

**14.12.1** In no event will 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.

**14.12.2** 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.

**14.13 Governing Law and Venue**

**14.13.1** The procurement, evaluation, and award of the Master



Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will 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 will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

**14.13.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will 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 will be in the Purchasing Entity's state.

**14.13.3** 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 the procurement, evaluation, award, or 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.

**14.14 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.

**15 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



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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.



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## Procurement Master Contract

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### EXHIBIT B: SCOPE OF WORK

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#### I. Master Agreement Objectives:

- A. The objective of this Contract is to maintain a full catalog offering and best value pricing for both semi and fully automated AED Units and associated accessories.
- B. Master Agreement awards will only be made to manufacturers. Manufacturers should include, as a part of their response, information of approved distributors through which Participating Entities can purchase products offered in the Master Agreement. All approved distributors must be identified using the provided form in Attachment L, Approved Distributor List and maintained with the Lead State throughout the life of the contract.

#### II. Master Agreement Deliverables:

- A. AED Units that are approved by the FDA:
  - Category I: Fully Automated
  - Category II: Semi-automated

- B. AED Accessories

A list of the most used consumables and accessories have been identified below:

- i. Batteries
- ii. Adult Pads (electrodes)
- iii. Pediatric Pads (electrodes)
- iv. Carrying Cases
- v. Wall Mount Kits
- vi. Fast Response Kits

#### C. Value-Add products and services.



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### **III. Contractor Responsibilities**

#### **A. Contractor Point of Contact for National Cooperative.**

All Contractors must identify a single point of contact, along with a direct phone line and email address they can be reached. This single point of contact shall be the primary contact for both the Lead State and any Participating Entities wishing to sign a Participating Addendum or regarding the resulting Master Agreement.

#### **B. Ordering/Invoicing**

1. There is no guaranteed minimum or maximum amount for orders. Each Purchasing Entity can order products as needed.
2. The Contractor(s) must be capable of:
  - a. Accepting verbal orders via telephone with use of State(s) purchasing card (P-card);
  - b. Accepting P-card and Purchase Orders online;
  - c. Providing the Purchasing Entity using a Purchase Order with a printable order confirmation after the order is placed, and a printable itemized invoice and receipt.
  - d. Accepting payments by check, electronic fund transfer, or with State(s) P- card. The contractor will be solely responsible for the credit card user- handling fee associated with credit card purchases.
3. Ordering instructions for entities must be described, outlined, and returned with the RFP response.

#### **C. Delivery**

1. All deliveries will be F.O.B. Destination (including Alaska, Hawaii, and all U.S. Territories), freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of an Order to be shipped without transportation charges and that is back ordered will be shipped without charge.



2. All deliveries will be “Inside Deliveries” as designated by a representative of the Purchasing Entity placing the Order, unless explicitly specified otherwise. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area, such as directly to point of use or designated location. Specific delivery instructions 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 immediately notify the Purchasing Entity placing the Order.
3. All products must be delivered in the manufacturer’s standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity’s Purchase Order number.
4. Products returned because of quality problems, duplicated shipments, etc. will be sent back to the Contractor within 30 calendar days at the Contractor’s expense, with no restocking charge and shall be replaced with specified products or the Purchasing Entity will be credited or refunded for the full purchase price.

#### **D. Inspection and Acceptance**

All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent

or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under the Master Agreement resulting from this RFP. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material, latent, or hidden defects subsequently revealed when goods are used. A material defect includes a nonconformity that substantially impairs value.

Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

Acceptance Testing is the process for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The



Acceptance Testing period shall be thirty (30) calendar days, unless another time is identified in the Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

#### **E. Product Warranty**

Contractor shall include a basic warranty for all AED Units purchased that lasts for a duration of no less than one year from time of Acceptance at no additional cost to Purchasing Entities. Warranties must guarantee the safe and effective operation of devices for the duration of the warranty. The cost for repair or replacement of devices under warranty must be covered by the Contractor. In the event that an AED Unit must be repaired or replaced, the Contractor shall provide the Purchasing Entity with a loaner unit and ensure there is no gap in coverage for that location.

#### **F. Guarantee of Equipment**

Contractors shall guarantee that the equipment offered is standard new equipment and that no attachment or part has been substituted or applied contrary to the Contractor's recommendations and standard practice. Products furnished under the terms of the Master Agreement will be guaranteed against any defect due to faulty material and/or workmanship. Products must meet all federal, state, and local standards for quality and safety requirements and must be FDA approved. All equipment delivered must be first quality manufactured workmanship and finish. Contractor shall immediately notify all Participating Entities of AED recalls and provide product replacements. No remanufactured or refurbished equipment may be provided under a Master Agreement resulting from this RFP.



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#### **G. Software Updates**

Contractor must provide and facilitate updates required for each AED unit to maintain full functionality over the unit's anticipated life and the methodology for performing or accessing the updates.

#### **H. Customer Service**

24/7 Call Support: Technical support via Telephone, for all items offered must always be available and must be provided for a period of no less than 3 years after purchase and acceptance.

#### **I. Product Training**

Product Documentation: All product documentation, manuals, and specifications must be provided at no additional cost.

Web/Video Training: Contractor must provide online or multimedia training at no additional cost.

### **IV. Additional Requirements**

#### **A. Distributors**

Contractor shall ensure the Lead State Contract Administrator is provided with up-to-date information regarding the status of approved distributors. Contractor shall notify the Lead State Contract Administrator via email in the event of a change in its distributor list.

Distributors may provide the products nationally or locally. The Participating Entity may have additional procedures regarding their usage of distributors within their Participating Addendum.

#### **B. Sustainability**

The Contractor should promote corporate and local sustainability practices by aiming to reduce adverse effects on human health and the environment for the entire product lifecycle, including energy, water, safety, delivery, storage, packaging, and training.

#### **C. Cost**

##### **1. Discounts to Remain Firm or Greater**

The percentage discount from the Contractor's submitted price schedule shall not decrease for all updates or revisions of Contractor's price schedule during the life of the Master Agreement and any subsequent Master Agreement renewals; however, Contractor may increase the discount at any time. New items or replacement products are to be discounted at the same (or greater) rate as similar products or replaced items.



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2. Price Negotiation During Contract Term

Contractor is expected to continuously negotiate with its suppliers to obtain improved discounts and extend improved pricing to Participating Entities. During the term of the Master Agreement Contractor must agree to negotiate in good faith to establish ceiling prices or other more favorable terms and conditions between the Contractor and its suppliers that are applicable to future orders during the term of the Master Agreement.

3. Price Lists and Updates

Contractor must furnish a physical and/or an electronic copy (at Lead State's option) of the price list(s) and periodic updates to the State of Oklahoma Lead State Administrator. Contractor must also furnish physical and/or electronic copies, at a Participating Entity's option, to all Purchasing Entities for which account numbers have been established. Contractor must distribute price lists as they become effective and in a timely manner. Price lists may be updated no more than once a quarter and price updates must be approved by the Lead State before becoming effective. Updated price lists may include new items but may not increase the price of items which previously appeared unless the price increase is requested in accordance with Section D below. Updates must be simultaneous for the entire line of products. All price lists, website access, and ordering capabilities must be supplied to the Participating Entities at no additional cost. Contractor must not add new replacement products for the purpose of a price increase. Stock keeping units (SKUs) shall be consistent and Contractor shall document discontinued items in writing when submitting replacement products.

4. Price List Access

At any time during the life of the Master Agreement issued under this RFP and for a three (3) year period from the end date of the Master Agreement, the Lead State reserves the right to request from the Contractor access to and/or a copy of the applicable price list used for the Master Agreement's pricing basis for pricing verification. Failure to provide the requested price list within three (3) business days following the Lead State's request may result in termination of the Master Agreement.



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D. Price Changes

1. Price decreases or discount increases are permitted and encouraged at anytime. Price reductions announced must be applied at the time of the announcement for the products that have not yet been delivered to the Participating Entities.
2. All discounts offered must remain firm or increase during the term of a Master Agreement issued under this RFP.
3. The Contractor or Lead State may request price adjustments no sooner than 12 months from the Master Agreement execution date and no more than once per contract year. Contractors must submit a request to the Lead State at least thirty (30) days prior to the end of the current term. Requests must be in writing and must be received 30 days prior to the contract renewal date.
  - a. If the Contractor or state fails to request a price adjustment 30 days before the Master Agreement renewal date, the adjustment will be effective 30 days after the state or Contractor receives their written request.
  - b. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U)
  - c. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June); and each (January through June six-month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive price adjustments will be allowed. All price adjustments must be approved by the Lead State prior to the implementation of the adjusted pricing. Approval shall be in the form of a contract amendment issued by the Lead State.
  - d. Approval for all price increases is dependent upon full compliance with the terms of the Master Agreement including reporting requirements.

**V. Optional Services and Product Support:**

Offerors may propose optional value-add services. Services included in this section are considered in addition to the minimum requirements set forth in this scope of work.



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A. Service Plan

1. Offerors may propose a service agreement to provide maintenance and repair on their proposed devices. Offerors Service Agreement will should include, but is not limited to, the following services:
  - Semi-annual physical inspection of AED's
  - Battery replacement program
  - Data tracking of serial numbers, expiration dates, etc.
  - Additional software enhancements and/or updates
  - Hardware updates
  - Assurance of compliance of the AED unit with local, state, and federal regulations.
2. Offerors must be aware of local requirements for the States in which they will be servicing
3. All work performed under a Service Agreement must meet the specifications for that device.
4. Offerors may submit additional information on any additional types of service agreements they may offer, to provide maintenance and repair on their devices, i.e., standard service agreement or premier service agreement. No pricing information should be included in the technical response.

B. Product Training

1. Optional On-site Training: Offerors shall provide on-site training, as requested. The cost for on-site training should be reflected in the Offerors' cost proposal (Attachment H, Value-Add) as a separate rate.

C. Extended Warranty

Offerors may propose an extended warranty past the term of the basic warranty provided under the Master Agreement. Offerors must include a complete description of the coverage provided under the extended warranty in their cost proposal.



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D. Additional Value-Add Options

Offerors may include in their Proposal additional Value-Add options not specifically requested in the scope of work. Value-Add options should not deviate from the nature of products and services requested in the scope of work and should include a thorough description of the option and how it brings value to the State. Examples include battery replacement plans, unconventional training options, alternative maintenance plans, and other services not specified.

Award of Value-Add options is subject to the approval of the Lead State.



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## **Procurement Master Contract**

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### **Exhibit C – Cost**

## Exhibit C - Cost

Request for Proposals for  
**AED Units and Accessories**  
Issued by the **State of Oklahoma**  
Solicitation Number **EV00000354**



| Offeror Name: Avive Solutions           |                                                                                                                                                                                                                                                            |     |             |             |            |             |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------|-------------|------------|-------------|
| Validity Period:                        | 01/01/2024-12/31/2024                                                                                                                                                                                                                                      |     |             |             |            |             |
| Category I: AED Units - Fully Automated |                                                                                                                                                                                                                                                            |     |             |             |            |             |
| Item Number                             | Product Description                                                                                                                                                                                                                                        | UOM | QTY per UOM | List Price  | % Discount | Net Price   |
| Avive AED with Connect Installed (Item  | One (1) Avive AED with Connect Installed. Comes equipped with one (1) single-use Avive AED Pad Cartridge that can be used on adults or children, one (1) medical-grade Avive USB Power Adapter, and one (1) one-meter (3.3 foot) Avive USB Charging Cable. | EA  | 1           | \$ 1,899.99 | 15.00%     | \$ 1,614.99 |
|                                         |                                                                                                                                                                                                                                                            |     |             |             |            |             |
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[Add additional rows as needed.]

Estimated Delivery Time: 1-2 weeks for order < 100 AED units. 3-4 weeks for orders of 100+ AEDs

Exhibit C - Cost

Request for Proposals for  
**AED Units and Accessories**  
Issued by the **State of Oklahoma**  
Solicitation Number EV00000354



|                                         |                                                                                            |     |             |            |            |           |
|-----------------------------------------|--------------------------------------------------------------------------------------------|-----|-------------|------------|------------|-----------|
| Offeror Name:Avive Solutions            |                                                                                            |     |             |            |            |           |
| Validity Period:                        | Start/End 01/01/2024 - 12/31/2024                                                          |     |             |            |            |           |
| Category II: AED Units - Semi Automated |                                                                                            |     |             |            |            |           |
| Item Number                             | Product Description                                                                        | UOM | QTY per UOM | List Price | % Discount | Net Price |
|                                         | AED only comes in fully-automatic version; semi-automatic section intentionally left blank |     |             |            |            | \$ -      |
|                                         |                                                                                            |     |             |            |            |           |
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[Add additional rows as needed.]

## Exhibit C - Cost

Request for Proposals for  
**AED Units and Accessories**  
Issued by the **State of Oklahoma**  
Solicitation Number **EV00000354**



| Offeror Name:Avive Solutions |                                                                                                                                                                                                                                                                                                                   |                                   |             |            |            |           |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------|------------|------------|-----------|
| Validity Period:             |                                                                                                                                                                                                                                                                                                                   | Start/End 01-01-2024 - 12-31-2024 |             |            |            |           |
| AED Accessories              |                                                                                                                                                                                                                                                                                                                   |                                   |             |            |            |           |
| Item Number                  | Product Description                                                                                                                                                                                                                                                                                               | UOM                               | QTY per UOM | List Price | % Discount | Net Price |
| ACC01                        | One (1) single-use Avive AED Pad Cartridge. Each cartridge contains two (2) adhesive electrode pads and can be used on either adults or children for analysis and defibrillation.                                                                                                                                 |                                   |             | \$119.99   | 20.00%     | \$ 95.99  |
| ACC08                        | One (1) Avive Training Cartridge. The Avive Training Cartridge contains two (2) pads that can be used for training purposes. NOTE: The Avive Training Cartridge is FOR TRAINING PURPOSES ONLY AND WILL NOT DELIVER DEFIBRILLATION THERAPY.                                                                        |                                   |             | \$99.99    | 30%        | \$ 69.99  |
| ACC03                        | One (1) Avive AED Charge Stand. This wall mount stand comes with one (1) 2-meter (6.6 foot) Avive USB Charging Cable and one (1) medical-grade Avive USB Power Adapter. Wall screws and wall anchors are included.                                                                                                |                                   |             | \$99.99    | 10%        | \$ 89.99  |
| ACC05                        | One (1) medical-grade Avive USB Power Adaptor to charge your Avive Connect AED. Compatible with the Avive USB Charging Cable (not included). Input 100-240 VAC, 50-60 Hz.                                                                                                                                         |                                   |             | \$24.99    | 10%        | \$ 22.49  |
| ACC07                        | One (1) one-meter (3.3 foot) Avive USB Charging Cable. Compatible with the Avive USB Power Adapter (not included).                                                                                                                                                                                                |                                   |             | \$9.99     | 10%        | \$ 8.99   |
| ACC02                        | One (1) compact, high-quality CPR/AED rescue kit containing: one (1) one-way face shield, one (1) pair of nitrile gloves (not made with natural rubber latex), one (1) set of emergency shears, one (1) medical prep razor, one (1) absorbent dry towel, one (1) antiseptic towelette, and one (1) biohazard bag. |                                   |             | \$28.99    | 20%        | \$ 23.19  |
| ACC11                        | One (1) Avive Hard Carrying Case, designed to keep your Avive Connect AED safe in the harshest conditions.                                                                                                                                                                                                        |                                   |             | \$219.99   | 20%        | \$ 175.99 |
| ACC04                        | One (1) vinyl, multi-configurable wall sign measuring 14.75" x 9" with pre-drilled holes (screws are not included) to help drive awareness to your AED's location.                                                                                                                                                |                                   |             | \$14.99    | 10%        | \$ 13.49  |
| PKG07                        | Includes one (1) compact wall cabinet with door-activated alarm and one (1) Semi-Rigid Carrying Case (ACC09) to securely store your Avive Connect AED.                                                                                                                                                            |                                   |             | \$249.99   | 25%        | \$ 187.49 |
| PKG08                        | Includes one (1) compact wall cabinet with door-activated alarm and one (1) Avive AED Charge Stand (ACC03) to securely store your Avive Connect AED.                                                                                                                                                              |                                   |             | \$249.99   | 30%        | \$ 174.99 |
| ACC09                        | Includes one (1) ultra-compact Semi-Rigid Carrying Case measuring approximately 8.9"x7.5"x4.5". Designed to securely store your Avive Connect AED, an Avive CPR/AED Rescue Kit, and a spare Avive AED Pad Cartridge or Avive Training Cartridge (not included).                                                   |                                   |             | \$149.99   | 30%        | \$ 104.99 |
|                              |                                                                                                                                                                                                                                                                                                                   |                                   |             |            |            |           |
|                              |                                                                                                                                                                                                                                                                                                                   |                                   |             |            |            |           |
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[Add additional rows as needed.]

Estimated Delivery Time: 1-2 weeks for order < 100 units. 3-4 weeks for orders of 100+ units

**Request for Proposals for  
AED Units and Accessories**  
Issued by the **State of Oklahoma**  
**Solicitation Number EV00000354**

[illegible]

AED uses rechargeable batteries so there is NO on-going cost of replacement batteries  
Dual Language at NO extra cost  
Every device is equipped with Child Mode at no extra cost  
Universal Pads: AED uses the same set of pads for adults and pediatric patients, so only one set of pads is necessary for adults and while in child mode

**Exhibit 2**  
**Connecticut Standard Terms**

**1. Definitions**

**a. Business Day**

A day of the week recognized by the Client Agency as a workday, exclusive of Saturdays, Sundays and any State or federal holiday.

**b. Claims**

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

**c. Client Agency Data**

Any data or information of the Client Agency that Contractor receives or creates by any means and in any form in connection with this Contract, Deliverables or Performance, including data and information with respect to any one or more of the following: databases, systems, operations, facilities, and regulatory compliance.

**d. Confidential Information**

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

**e. Confidential Information Breach**

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

**f. Contractor Parties**

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

**Exhibit 2**  
**Connecticut Standard Terms**

**g. Corrective Action Plan, or CAP**

A detailed written plan produced by Contractor at the request of the Client Agency to correct or resolve a Breach identified by the Client Agency in accordance with the Breach section of this Contract.

**h. Deliverable**

Each (1) Good, Service, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Pricing Schedule or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

**i. Effective Date**

The date that the Connecticut Attorney General's Office approves this Contract, as evidenced by its signature.

**j. Force Majeure Event**

Strikes, lockouts, riot, sabotage, rebellion, insurrection, acts of war, acts of terrorism, failure of or inadequate permanent power, fire, flood, earthquake, epidemics, natural disasters, and acts of God.

**k. Goods**

All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things.

**l. Goods or Services**

Goods, Services or both, as specified in the Solicitation and set forth in Exhibit A, Deliverables Document.

**m. Perform**

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The word "Perform" includes all parts of speech.

**n. Purchase Order**

A written or electronic document that the Client Agency issues for one or more Deliverables in accordance with the terms of this Contract.

**o. Records**

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries,

**Exhibit 2**  
**Connecticut Standard Terms**

memoranda and correspondence, kept or stored in any form.

**p. Services**

The labor or work, necessary or appropriate for the Contractor to Perform.

**q. Site**

Location(s) specified by the Client Agency where Deliverables are to be installed, Services rendered, or materials furnished.

**r. Specifications**

Contractor's published technical and non-technical detailed descriptions of each Deliverable's capabilities, or intended use or both, as more fully set forth in this Contract or a Statement of Work, as applicable.

**s. State**

The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

**t. Statement of Work ("SOW")**

Statement issued in connection with a Purchase Order for a Deliverable available under this Contract which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.

**u. Term**

The original term of this Contract plus any extensions exercised under this Contract.

**v. Termination**

An end to this Contract prior to the end of its Term.

**w. Title**

All ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Deliverable.

**2. P-Card (Purchasing Credit Card)**

- a. Purchases may be made using the State of Connecticut Purchasing Card Program ("P-Card Program or P-Card") in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.
- b. Contractor shall be equipped to receive orders issued by the Client Agency using the P- Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Client Agency or rendering of Services.

**Exhibit 2**  
**Connecticut Standard Terms**

- c. The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.
- d. Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at [DAS.PCardAdmin@ct.gov](mailto:DAS.PCardAdmin@ct.gov).

### **3. Prevailing Wages**

Some or all of the Performance may be subject to prevailing wages. Accordingly, the following provision is included in accordance with the requirements of Conn. Gen. Stat. Sec. 31-53(a):

The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Conn. Gen. Stat. Sec. 31-53(a), shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed.

Any Contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

### **4. Standard Wages**

Contractors shall comply with all provisions of section 31-57f of Connecticut General Statutes, Standard Wage Rates for Certain Service Workers and shall pay wages in accordance with the current wage rates provided by the Connecticut Department of Labor. Information regarding this Statute and how and when it applies can be obtained from Connecticut Department of Labor's website at <https://www.ctdol.state.ct.us/wgwkstnd/standardwage.htm>

Questions concerning the provisions and implementation of this act should be referred to the Connecticut Department of Labor, Wage and Workplace Standards Division, 200 Folly Brook Blvd., Wethersfield, CT 06109-1114 (860) 263-6790 or the designated representative. A link to the Standard Wages can be reached at:  
<https://www.ctdol.state.ct.us/wgwkstnd/prevailing-rates/service/rates-service.htm>

### **5. Purchase Orders**

- a. This Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued Purchase Order against this Contract for Performance.
- b. The Client Agency shall issue a Purchase Order against this Contract directly to the Contractor and to no other party.
- c. All Purchase Orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase Orders issued in compliance with such requirements shall be deemed to be duly issued.
- d. A Contractor Performing without a duly issued Purchase Order in accordance with this Section does so at the Contractor's own risk.

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- e. The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued Purchase Orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the Purchase Order or a copy bearing any hand-written signature or other "original" marking.

**6. Delivery**

- a. Delivery shall be made as ordered and in accordance with this Contract. Unless otherwise specified in this Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- b. In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in this Contract, such extension applying only to the particular item or shipment.
- c. Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in this Contract.
- d. All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

**7. Time of the Essence**

Time is of the essence with respect to all provisions of this Contract that specify a time for Performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.

**8. Waiver**

- a. No waiver of any Breach of this Contract shall be interpreted or deemed to be a waiver of any other or subsequent Breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in this Contract or at law or in equity.
- b. A party's failure to insist on strict performance of any provision of this Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or Breach.

**9. Goods: Standards and Appurtenances and Inspection**

- a. Standards and Appurtenances

Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in this Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under this Contract. Where this Contract does not specifically list or describe any parts or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.

- b. Inspection

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The Commissioner of DAS, in consultation with the Client Agency, shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the Specifications in this Contract. If any Goods fail in any way to meet the Specifications in this Contract, the Client Agency or the Commissioner of DAS may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the Specifications. Any decision pertaining to any such failure or rejection shall be final and binding.

#### **10. Emergency Standby for Deliverables**

If any Federal or State official, having authority to do so, declares an emergency or the occurrence of a natural disaster within the State of Connecticut, DAS and the Client Agency may request the Goods and Services on an expedited and prioritized basis. Upon receipt of such a request the Contractor shall make all necessary and appropriate commercially reasonable efforts to reallocate its staffing and other resources in order to give primary preference to Performing this Contract ahead of or prior to fulfilling, in whole or in part, any other contractual obligations that the Contractor may have. The Contractor is not obligated to make those efforts to Perform on an expedited and prioritized basis in accordance with this paragraph if doing so will make the Contractor materially breach any other contractual obligations that the Contractor may have.

Contractor shall acknowledge receipt of any request made pursuant to this paragraph within 2 hours from the time that the Contractor receives it via Purchase Order or through a request to make an expedited or prioritized purchase through the State of Connecticut P-Card Program. If the Contractor fails to acknowledge receipt within 2 hours, confirm its obligation to Perform or actually Perform, as set forth in the Purchase Order or through the P-Card Program, then DAS and the Client Agency may procure the Performance from another source without further notice to Contractor and without creating any right of recourse at law or in equity against DAS or Client Agency.

#### **11. Data: Access**

Access to Contract and State Data

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning this Contract and the Client Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the Client Agency and the State Auditors of Public Accounts at no additional cost.

#### **12. Rejected Items; Abandonment**

a. The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with this Contract, direct the Contractor to remove any or all such Goods ("the "Rejected Goods") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties, that:

1. they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all

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ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;

2. there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  3. they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  4. if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  5. they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- b. The Contractor shall secure from each Contractor Party, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this Section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this Section.

### **13. Project Personnel**

- a. The Client Agency shall designate a project administrator ("Project Administrator"), who may be replaced at the discretion of the Client Agency and shall notify Contractor in writing of such designation. The Project Administrator shall have the authority to act for the Client Agency under this Contract for scheduling, issue resolution, meeting coordination and information dissemination and for any Deliverables and such authority shall continue to be in effect throughout the Term, unless the Client Agency sooner notifies Contractor in writing of any change in the authority or identity of the Project Administrator.
- b. The Contractor shall designate individual employees of Contractor who, from time to time, hold positions with the job functions described in a SOW or PO in accordance with this Contract ("Key Contractor Personnel"). The parties shall complete, date and sign a project team member list identifying the Key Contractor Personnel assigned to the project and attach the list to the applicable PO or SOW, or both. Contractor shall not remove any Key Contractor Personnel except in accordance with the following:
  1. If one or more of the Key Contractor Personnel, for any reason, becomes or is expected to become unavailable for work for a continuous period exceeding 5 Business Days, or is

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expected to devote substantially less effort to the work than anticipated at the time that they were approved as Key Contractor Personnel, then the Contractor shall, subject to the concurrence of the Project Administrator, replace that Key Contractor Personnel with personnel of at least equal ability and qualifications no later than 2 Business Days after being notified or becoming aware of the Key Contractor Personnel's actual or expected unavailability or the date agreed upon by the Project Administrator, whichever is earlier.

2. For any reason, the Client Agency may demand, in writing, that the Contractor either remove one or more Key Contractor Personnel, or, remove the Key Contractor Personnel and provide a substitute. The request may, but need not, provide a detailed explanation of the circumstances for the proposed removal. The Contractor shall deliver the resumes of the proposed substitute Key Contractor Personnel to the Project Administrator for consideration within 3 Business Days of receiving the substitution request. The Project Administrator shall notify the Contractor of approval or disapproval in writing within 3 Business Days of receiving the resumes. Once the Client Agency approves, the Contractor shall make the change in the Key Contractor Personnel within 2 Business Days of the approval.
  3. Time is of the essence in the removal process of Key Contractor Personnel. Accordingly, the Contractor shall do and perform all acts and things that are necessary or appropriate in order to minimize or eliminate disruptions to the Performance.
- c. If the project team member list will change, then the parties shall date and sign a revised project team member list to reflect any changes to the Key Contractor Personnel. The parties will do so no later than ten (10) days after the effective date of the change and the parties will indicate on the revised list that such revised list supersedes the list being revised. The revised list will be deemed to be attached to the Purchase Order or SOW, or both, as of the date that the last party signs it, without any further act necessary of either party.

#### **14. Working and Labor Synergies**

The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties, their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under this Contract.

#### **15. Background Checks**

The Contractor and Contractor Parties shall submit to and incur the cost of fingerprint supported federal and state criminal history background checks as may be required by the State, the State of Connecticut Department of Emergency Services and Public Protection, or as provided for in any State document that governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

#### **16. Contractor Guaranties**

- a. Contractor shall:

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1. Perform fully under this Contract;
2. Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
3. Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the Site, Goods, the Contractor's work or that of Contractor Parties;
4. With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices.
5. Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
6. Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

**17. Representations and Warranties Regarding Motor Vehicles**

If in the course of Performance or in any other way related to this Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1 (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, that:

- a. it is the owner of record or lessee of record of each such motor vehicle used in the Performance of this Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- b. each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of this Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- c. each Contractor Party who uses or operates a motor vehicle at any time in the Performance of this Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- d. each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of

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motor vehicles of such type, class and weight, including, but not limited to, requirements for intrastate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 18,001 pounds or more or interstate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 10,001 pounds or more otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations. If the Contractor is a "motor carrier," as that term is defined in section 49 CFR Part 390, and the Contractor is subject to an order issued by the Federal Motor Carrier Safety Administration that prohibits such Contractor from operating or allowing the operation of a motor vehicle, then the Contractor shall comply fully with such order. In addition, if a motor vehicle or its operator is declared out of service pursuant to Conn. Gen. Stat. § 14-163c(d)(4), then the Contractor shall not operate or allow the operation of that motor vehicle and shall not allow the operator to operate a motor vehicle while the respective subject out-of-service order is in effect.

## **18. Sales and Use Report**

Contractor shall deliver a sales and use report on a quarterly basis, in form and content as pre-approved by DAS or the Client Agency. The Contractor shall deliver the report within ten (10) days following the end of each calendar quarter. The Contractor shall provide the Client Agency with any additional reports as the Client Agency may request from time to time within ten (10) days following receipt of the Client Agency's written request. Timely submission of these reports is a material requirement of this Contract. All Title and property rights and interests in and to the reports and the data in the media containing the reports at all times is and will always remain vested in the State. At no time will Contractor have Title to such reports, data or media, wherever located. Accordingly, the Client Agency shall have a perpetual, irrevocable, non-exclusive, transferable right to display, modify, copy and otherwise use the reports, data, and information provided under this Section.

## **19. Breach**

- a. If one party (the "Non-breaching Party") determines that the other (the "Breaching Party") has failed to comply with any of the Breaching Party's corresponding Contract obligations (a "Breach"), then the Non-Breaching Party shall provide written notice of such failure to the Breaching Party in accordance with this Contract. The Non-breaching Party must provide the Breaching Party an opportunity to remedy the Breach within thirty (30) calendar days from the date of the notice. However, if Contractor is the Breaching Party, then the Client Agency may set forth any remedy period in the notice, so long as that period is otherwise consistent with the provisions of this Contract. The period set forth in the notice is known as the "Remedy Period." The Non-Breaching Party shall extend the Remedy Period if it is satisfied that the Breaching Party is making a good faith effort to remedy the Breach, but the nature of the Breach is such that it cannot be remedied within the Remedy Period.
- b. If the Client Agency determines that the Contractor has committed a Breach, then the Client Agency may require the Contractor to, and Contractor shall, prepare and submit to the Client Agency a CAP in connection with the identified Breach. Contractor shall provide in the CAP a detailed explanation of the deficiencies and other factors that contributed to the cited Breach, Contractor's assessment or diagnosis of Breach (identifying the deficiencies and factors in reasonable detail, with references to the applicable Specifications), and a specific proposal to remedy or resolve the Breach. Contractor shall submit the CAP to the Client Agency within (10) Business Days following the Client Agency's request for the CAP for the Client Agency's review and approval. Within (10) Business Days of receiving the CAP, the Client Agency must either approve the CAP, or reject it by delivering to Contractor a written explanation for the rejection. If the Client Agency fails to accept or reject the CAP within the (10) Business Days, then the CAP is deemed to have been approved, without more. The Client Agency's explanation for the rejection

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must include suggestions for changes to the CAP and the Contractor shall address the suggestions in such a manner to make it likely that the Client Agency will approve the CAP when the Contractor re-submits it to the Client Agency for review and approval. If the Client Agency rejects a CAP, then the parties will repeat this submittal and review process until the earliest of one of the following: (1) the Client Agency accepts a CAP, (2) the Client Agency waives its right to receive a CAP, (3) Contractor remedies the Breach, (4) the Client Agency waives the Breach, or (5) the Client Agency makes a determination to Terminate this Contract. After the first rejection, each of the parties will have (5) Business Days, instead of (10) Business Days, within which to review the CAP. Each subsequent revision and review will be for up to (3) Business Days each instead of (10) or (5) Business Days.

- c. If the Client Agency determines that the Contractor has Breached this Contract, then the Client Agency may withhold payment in whole or in part for any amounts due pending resolution of the Performance issue, provided that the Client Agency notifies Contractor in writing prior to the date that the payment would have been due.
- d. For purposes of the Client Agency determining whether there is a Breach under this Contract, or whether any statement in the Representations and Warranties Section of this Contract is false or misleading, the parties deem the Acts of the Contractor Parties to be the Acts of the Contractor itself, as if the Contractor itself was the subject of the Acts which the Client Agency considers in determining if there was a Breach, or an instance of false or misleading statements, or both.
- e. The written notice of the Breach may include an effective Termination date. If the identified Breach is not remedied by the stated Termination date, unless otherwise modified by the Non-breaching Party in writing before such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, then the Non-breaching Party shall provide the Breaching Party no less than twenty-four (24) hours' prior written notice before terminating this Contract.
- f. Notwithstanding any provisions in this Contract, DAS may terminate this Contract with no Remedy Period for Contractor's Breach or violation of any of the representations or warranties in this Contract and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to Contractor or Contractor Parties or any third party. Termination under this Breach section is subject to the provisions of the Termination Section of this Contract. In case of such revocation or Termination, the Client Agency will have no liability or responsibility to Contractor or Contractor Parties or any third party, or any of them, resulting from the Termination or revocation.
- g. None of the State's rights under this Breach Section diminishes the State's rights under the Termination Section of this Contract.

## **20. Termination**

- a. Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate this Contract whenever DAS makes a written determination that such Termination is in the best interests of the State. DAS shall notify the Contractor in writing of Termination pursuant to this Section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under this Contract prior to such date.
- b. Notwithstanding any provisions in this Contract, either party, through a duly authorized employee, may, after making a written determination that the other party has Breached this Contract and has failed to remedy the Breach, Terminate this Contract in accordance with the Breach Section of this Contract.
- c. Notices of Termination must be sent certified in accordance with the Notice Section of this Contract. Upon receiving the Termination notice from DAS, the Contractor shall immediately

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modify or discontinue all Performance affected in accordance with the terms of the notice, undertake commercially reasonable efforts to mitigate any losses or damages and deliver to DAS or the Client Agency (as directed in the notice) all Records. The Records are deemed to be the property of the State and the Contractor shall deliver them to DAS or the Client Agency (as directed in the notice) no later than thirty (30) days after the Termination of this Contract or fifteen (15) days after the Contractor receives a written request from DAS for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

- d. Except for any work which DAS directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and Purchase Orders and shall not enter into any further subcontracts, Purchase Orders or commitments.
- e. The Client Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Client Agency in accordance with Exhibit A, Deliverables Document or a SOW, as applicable, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Client Agency will not tender to the Contractor any payments for anticipated or lost profits. Upon request by the Client Agency, the Contractor shall assign to the Client Agency, or any replacement contractor which the Client Agency designates, all subcontracts, Purchase Orders and other commitments, deliver to the Client Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as DAS or the Client Agency (as directed in the notice) may request.
- f. Upon Termination of this Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the Sections which survive Termination. All representations, warranties, agreements and rights of the parties under this Contract shall survive such Termination to the extent not otherwise limited in this Contract and without each one of them having to be specifically mentioned in this Contract.
- g. Termination of this Contract pursuant to this Section shall not be deemed to be a Breach of contract by DAS or the Client Agency.

## **21. Continued Performance**

The Contractor and Contractor Parties shall continue to Perform their obligations under this Contract while any dispute concerning this Contract is being resolved.

## **22. Open Market Purchases**

Failure of the Contractor to Perform within the time specified in this Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as this Contract provides or allows, constitutes a Breach of this Contract and as a remedy for such Breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Terminate this Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not Performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit C of the Master Agreement and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Terminate this Contract, the Client Agency will deduct such open market purchases from this Contract's quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be

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determined by the Client Agency.

**23. Setoff**

The State, in its sole discretion, may setoff and withhold (1) any costs or expenses including but not limited to costs or expenses such as overtime, that the State incurs resulting from the Contractor's unexcused Breach under this Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts of whatever nature that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under this Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff and to withhold shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' Breach of this Contract, all of which shall survive any setoffs and withholdings by the State.

**24. Cross-Default**

- a. If the Contractor or Contractor Parties Breach, default or in any way fail to Perform satisfactorily under this Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements ("Other Agreements") that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in this Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- b. If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under this Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or this Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under this Contract.

**25. Representations and Warranties**

Contractor represents and warrants to the State for itself and, as applicable, the Contractor Parties that:

- a. each is a duly and validly existing under the laws of each such entity's respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by this Contract. Further, as appropriate, each has taken all necessary action to authorize the execution, delivery and Performance of this Contract and have the power and authority to execute, deliver and Perform its obligations under this Contract;
- b. each will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics; Title 4a, Chapter 51 concerning State purchasing; and (3) Title 22a, Chapter 446c, section 22a-194a concerning the use of polystyrene foam;
- c. the execution, delivery and Performance of this Contract will not violate, be in conflict with, result in a Breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or

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any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- d. each is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- e. as applicable, each has not, within the three years preceding the Effective Date of this Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under this Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or Performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;
- f. each is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- g. they have notified DAS in writing whether they have had any contracts with any governmental entity Terminated for cause within the three (3) years preceding the Effective Date;
- h. none has employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure this Contract and it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract or any assignments made in accordance with the terms of this Contract;
- i. to the best of each entity's knowledge, there are no Claims involving Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract;
- j. each shall disclose, to the best of its knowledge, to the State in writing any Claims involving it that would be required disclosure on Form 8-K of the Securities Exchange Act of 1934 no later than ten (10) calendar days after becoming aware or after it should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) calendar days in the Section of this Contract concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;
- k. each entity's participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- l. the proposal submitted by Contractor in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as defined in the Tangible Personal Property Section of this Contract) of the proposer, submitting a proposal for the same Solicitation, and is in all respects fair and without collusion or fraud;
- m. each is able to Perform under this Contract using their own resources or the resources of a party who has not submitted a proposal;
- n. if Contractor does not have plenary authority to make the representations and warranties in this Section, as applicable, on behalf of Contractor Parties, then Contractor shall enter into a written contract with Contractor Parties, in which contract Contractor Parties shall make all of the applicable representations and warranties in this Section;

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- o. each has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut; they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- p. none owes unemployment compensation contributions;
- q. none is delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- r. all of each entity's vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- s. each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms of this Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from DAS or the Client Agency, such information as DAS or the Client Agency may require to evidence, in their sole determination, compliance with this Section;
- t. each either owns or has the authority to use all the Deliverables;
- u. to the best knowledge of Contractor, the Deliverables do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party;
- v. to the best knowledge of Contractor, the Client Agency's use of any Deliverables in a manner consistent with this Contract shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- w. if any party shall procure any Deliverables, they shall sublicense such Deliverables and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Deliverables; and
- x. each shall assign or otherwise transfer to the Client Agency or afford the Client Agency the full benefits of any manufacturer's warranty for the Deliverables, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

**26. Further Assurances**

The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.

**27. Advertising**

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS' prior written approval.

**28. Contractor Changes**

The Contractor shall notify DAS in writing no later than ten (10) days from the effective date of any change in:

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- a. its certificate of incorporation or other organizational document;
- b. more than a controlling interest in the ownership of the Contractor; or
- c. the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS' satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of this Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS' written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under this Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under this Contract until Performance is fully completed.

**29. Contractor Responsibility**

- a. The Contractor shall be responsible for the entire Performance under this Contract regardless of whether the Contractor itself Performs. The Contractor shall be the sole point of contact concerning the management of this Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of this Contract.
- b. The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

**30. Security and/or Property Entrance Policies and Procedures**

Contractor shall adhere to established security and/or property entrance policies and procedures for each Client Agency. It is the responsibility of Contractor to understand and adhere to the Client Agency's policies and procedures prior to entering the Client Agency Site to Perform under this Contract.

**31. Disclosure of Contractor Parties Litigation**

Contractor shall require that all Contractor Parties, as appropriate, disclose in writing to Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract, no later than ten (10) calendar days after becoming aware of or after they should have become aware of any such Claims.

**32. Protection of Confidential Information**

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive

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written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
  3. A process for reviewing policies and security measures at least annually;
  4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
  5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a- 701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to, reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.
- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

### **33. Confidentiality; Non-Disclosure**

The State shall exercise at least the same degree of care to safeguard any trade secrets or confidential information of Contractor as the State does its own property of a similar nature and shall take reasonable steps to ensure that neither the confidential information of Contractor nor any part of

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it will be disclosed for reasons other than its own business interests. Such prohibition on disclosures does not apply to disclosures by the State to its employees, agents or representatives, provided such disclosures are reasonably necessary to the State's use of the Deliverable, and provided further that the State will take all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Contract. The State's performance of the requirements of this Section shall be subject to the State of Connecticut Freedom of Information Act ("FOIA").

All Records, Client Agency Data, and any Data owned by the State in any form, in the possession of the Contractor or Contractor Parties, whether uploaded, collected, stored, held, hosted, located or utilized by Contractor and Contractor Parties directly or indirectly, must remain within the continental United States.

**34. Disclosure of Records Concerning Governmental Functions**

This Contract may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

**35. Audit and Inspection of Plants, Places of Business and Records**

- a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the Performance of this Contract.
- b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- d. Contractor shall pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.
- e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

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- f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

**36. Indemnification**

- a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract from the negligence or reckless or willful acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, reasonable attorneys' and other reasonable professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- b. Contractor shall not be responsible for indemnifying, defending or holding the State, its officers, representatives, agents, servants, employees, successors and assigns harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.
- c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.
- e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract.
- f. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage.

**37. Forum and Choice of Law**

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the

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laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

**38. Assignment**

The Contractor shall not assign any of its rights or obligations under this Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this Section and declare the Contractor in breach of Contract. Any Termination by DAS for a breach is without prejudice to DAS' or the State's rights or possible Claims.

**39. Tangible Personal Property**

- a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
  1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes.
- b. For purposes of this Section of this Contract, the word "Affiliate" means any person, as defined in section 12-1 of the Connecticut General Statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten percent of the voting securities of the other person. The term "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary

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authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

**40. Americans with Disabilities Act**

Contractor represents that it is familiar with the terms of the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq, and that it is in compliance with the law. Failure of Contractor to satisfy this standard either now or during the Term as it may be amended will render this Contract voidable at the option of the State upon notice to Contractor. Contractor warrants that it will hold the State harmless from any liability that may be imposed upon the State as a result of any failure of Contractor to be in compliance with the Americans with Disabilities Act.

**41. Executive Orders and Other Enactments**

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its Term, or that may be made applicable to the Contract during its Term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to Perform under this Contract if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.
- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

**42. Non-Discrimination**

- a. For purposes of this Section, the following terms are defined as follows:
  1. "Commission" means the Commission on Human Rights and Opportunities;
  2. "Contract" and "contract" include any extension or modification of the Contract or contract;
  3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
  4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and

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- uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
  6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
  7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
  8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
  9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
  10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- b. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the

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Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- g. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by

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regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

- i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box:

#### **43. Whistleblower Provision**

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

#### **44. Summary of State Ethics Laws**

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

#### **45. Campaign Contribution Restriction**

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For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

**46. Energy Star Provision**

Equipment and appliances offered pursuant to this Contract shall meet or exceed the federal energy conservation standards set forth in the Energy Policy and Conversation Act, 42 USC 6295, any federal regulations adopted thereunder, and shall meet or exceed the federal Energy Star standards established by the U.S. Environmental Protection Agency and the U.S. Department of Energy.

**47. Force Majeure**

- a. The parties shall not be excused from their respective Contract obligations except in the case of Force Majeure Events and as otherwise provided for in this Contract.
- b. If a Force Majeure Event prevents a party from complying with any obligation or satisfying any conditions under this Contract, then that failure to comply will not constitute a Breach if (A) that party uses reasonable efforts to comply; (B) that party's failure to comply is not due to its failure to (i) take reasonable measures to protect itself against Force Majeure Events or (ii) develop and maintain a reasonable contingency plan to respond to Force Majeure Events; and (C) that party complies with its obligations under subsection (c) of this Section.
- c. If a Force Majeure Event occurs, then the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on its obligations under this Contract, and how long the noncomplying party expects the noncompliance to last. Thereafter, the noncomplying party shall update that information as reasonably necessary, or as the other party may reasonably request, whichever is more frequent. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume complying with its Performance and obligations under this Contract.
- d. Failure to provide written notice of any Force Majeure Event as soon as the failing party becomes aware of it, or failure by the other party to Act in response to the notice, does not excuse any delays or failures in Performance or obligations.

**48. Notice**

- a. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut Department of Administrative Services  
Procurement Division  
450 Columbus Boulevard, Suite 1202  
Hartford, CT 06103

**Exhibit 2**  
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Attention: Arlene Watson-Paulin

If to the Contractor:

Avive Solutions, Inc.  
185 Valley Drive, Brisbane, CA 94005-1340  
Brisbane, CA 94005-1340

Attention: Micah Bongberg

- b. Details regarding invoices and all technical or day-to-day administrative matters pertaining to this Contract shall be directed to:

Client Agency: The individual specified in the applicable Purchase Order.

Contractor: The individual designated by Contractor in the response to the Solicitation or as the Contractor may otherwise designate in writing to the Client Agency.

#### **49. Headings**

The headings given to the Sections in this Contract are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular Section to which the heading refers.

#### **50. Number and Gender**

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

#### **51. Amendments, Supremacy, Entirety of Contract**

No amendment to or modification of this Contract shall be valid or binding unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General. Any and all Purchase Orders, Statements of Work or other documents authorized in connection with this Contract shall be subject to the terms of this Contract. Any additional terms within any such Purchase Order, Statement of Work, or other document that contradict the terms of this Contract shall have no force or effect and shall in no way affect, change or modify any of the terms of this Contract. This Contract contains the complete and exclusive statement of the terms agreed to by the parties.

#### **52. Severability**

If any term or provision of this Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of this Contract shall be valid and enforced to the fullest extent possible by law.

#### **53. DAS Approval of Subcontractors**

DAS must approve any and all subcontractors utilized by the Contractor prior to any such subcontractor commencing any work. Contractor acknowledges that any work provided under this Contract to any State entity is work conducted on behalf of the State and that the Commissioner of

**Exhibit 2**  
**Connecticut Standard Terms**

DAS or his/her designee may communicate directly with any subcontractor as the State deems to be necessary or appropriate. Contractor must be responsible for all payment of fees charged by the subcontractor(s). A performance evaluation of any subcontractor must be provided promptly by the Contractor to DAS upon request. Contractor must provide the majority of the work associated with this Contract. It is understood that there may be times where conflicts due to scheduling may arise, which would lend the Contractor to utilize subcontractors to meet the Client Agency's needs. When this occurs, Contractor must alert DAS for approval of desired subcontractor before work is started.

**54. Iran Energy Investment Certification**

- a. Pursuant to Conn. Gen. Stat. § 4-252a, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
- b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this Section then the Contractor shall not be deemed to be in breach of the Contract or in violation of this Section. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the state of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

**55. Large State Contract Representation for Contractor**

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- (1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
- (2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
- (3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.

**56. Large State Contract Representation for Official or Employee of State Agency**

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

**Exhibit 2**  
**Connecticut Standard Terms**

**57. Consulting Agreements Representation**

Pursuant to Conn. Gen. Stat. § 4a-81, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in Conn. Gen. Stat. § 53a-157b, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of Conn. Gen. Stat. §4a-81.

|                             |                              |      |
|-----------------------------|------------------------------|------|
| Consultant's Name and Title | Name of Firm (if applicable) |      |
| Start Date                  | End Date                     | Cost |

The basic terms of the consulting agreement are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description of services provided:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Is the consultant a former State employee or former public official?    ☐ YES                      ☐ NO

If YES:

\_\_\_\_\_

Name of Former State Agency

\_\_\_\_\_

Termination Date of Employment