IMPORTANT NOTICE TO ALL BIDDERS

Solicitation No. #0000037049

This solicitation/acquisition is being conducted under Public Contract Code § 12125, et seq., the Alternative Protest Process.

Submission of a bid constitutes consent of the bidder for participation in the Alternative Protest Process.

Any protests filed in relation to the proposed contract award shall be conducted under the procedures in this document for the Alternative Protest Process.

Any bidder wishing to protest the proposed award of this solicitation must submit a written Notice of Intent to Protest (facsimile/email acceptable) to the Coordinator before the close of business on the last day of the protest period, which will be established in the Notice of Intent to Award. Failure to submit a timely, written Notice of Intent to Protest waives the bidder's right to protest.

Alternative Protest Process Coordinator/Support Services Unit
Department of General Services
Procurement Division
Statewide Procurement Oversight, Consulting and Support Services Section
707 Third Street, 2nd Floor South
West Sacramento, CA 95605
Voice: 279 / 799-3701
Fax: 916 / 376-6226
Email: PDprotest@dgs.ca.gov

REQUEST FOR PROPOSALS

for

AUTOMOTIVE PARTS

Issued by

The STATE OF CALIFORNIA

In collaboration with

NASPO ValuePoint

SOLICITATION NUMBER 0000037049 ***ADDENDUM 1***

RFP WEBSITE: ***https://caleprocure.ca.gov/event/77601/0000037049***
~~*[https://caleprocure.ca.gov/event/77061/0000037049]*~~

RFP OVERVIEW

I. INTRODUCTION

This Request for Proposal (RFP) is being issued by the State of California ("Lead State") in collaboration with the NASPO ValuePoint cooperative purchasing program. The purpose of this RFP is to establish one or more Master Agreements with qualified Offerors to provide Automotive Parts to the Lead State and NASPO ValuePoint Participating Entities.

The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local governmental entity because of the collective volume of potential purchases by numerous state and local governmental entities.

About NASPO ValuePoint

NASPO ValuePoint is a division of the National Association of State Procurement Officials (NASPO), a non-profit association dedicated to advancing public procurement through leadership, excellence, and integrity. In accordance with NASPO ValuePoint's Lead State Model™, the Lead State is issuing this RFP, evaluating responses, and establishing Master Agreements with the support and assistance of a Multistate Sourcing Team™ composed of individuals from other member states, representing a broad range of perspectives that ensure the RFP incorporates best practices recognized by public entities across the country.

Participation in NASPO ValuePoint Master Agreements is convenient and cost-effective for eligible entities—including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories—and suppliers, with no membership or registration required. In 2024, contractors reported a combined **$21.07 billion** in sales through NASPO ValuePoint Master Agreements awarded through cooperative solicitations like this RFP, including a combined **$57.67 million** in sales through the current Automotive Parts portfolio.

More information about NASPO, NASPO ValuePoint, and the NASPO ValuePoint Lead State Model can be found at www.naspo.org and www.naspovaluepoint.org and in Attachment 5 – Participation Information.

II. GENERAL INFORMATION AND INSTRUCTIONS

A. RFP Contact

The following individual is the Lead State Procurement Official and sole contact for this RFP:

Yolanda Tutt
State of California
Department of General Services
Procurement Division
Phone: 279-946-8401
Email: MAU2mailbox@dgs.ca.gov

All inquiries and questions must be directed to the Lead State Procurement Official only. Oral communications are discouraged and shall not be binding to the Lead State. Offerors should only rely on written statements issued by the Lead State Procurement Official.

B. RFP Website

Information regarding this RFP will be published on the California State Contracts Register (CSCR), located on the Cal eProcure website, at the following link:

RFP 0000037049 (https://caleprocure.ca.gov/event/77601/0000037049)

Offerors are responsible for checking the RFP website for updated information.

C. RFP Documents

This RFP consists of this RFP Overview, the following attachments, and any information or materials posted by the Lead State to the RFP Website, as amended:

1. Alternative Protest Process (APP) Cover Page
2. Attachment 1 – RFP Terms and Conditions
3. Attachment 2 – Scope of Work
4. Attachment 3 – RFP Evaluation Plan
5. Attachment 4 – Sample Master Agreement
6. Attachment 5 – Participation Information
7. Attachment 6 – Protest Information
8. Attachment 7 – Offeror Proposal Requirements
9. Attachment 8 – Offeror Information, Acknowledgements, and Certifications
10. Attachment 9 – Offeror Response Worksheet
11. Attachment 10 – Cost Proposal

D. Important Dates

The RFP Table 1 below outlines important key action dates for Offerors responding to this RFP. All times are in Pacific Standard Time (PST). The Lead State may issue an addendum if any dates or times are revised. Dates following the RFP Close Date are approximate and may be adjusted without an addendum to the RFP.

RFP Table 1: Key Action Dates

Event/Action	Date
1. RFP Open Date	01/08/2026
2. Last day to submit written questions for Pre-Proposal Conference	***01/21/2026*** ~~[02/17/2026]~~
3. Optional Pre-Proposal Conference (Webinar) Location: Web Link to attend Live Conference: Click here to join meeting Or call in (audio only): +1 916-245-8850 Phone Conference ID: 846400568#	01/22/2026 10:30 AM to 11:30 AM
4. RFP Q&A Deadline (Last day to submit written questions for clarification of RFP)	01/23/2026
5. RFP Close Date (Offeror Proposals Due)	02/17/2026 by 5:00 PM
6. Public Cost Opening	TBD
7. Notice of Intent to Award	TBD
8. Last day to submit Notice of Intent to Protest Award	TBD
9. Master Agreement Award	TBD
10. Master Agreement Start Date	10/20/2026

E. Pre-Proposal Conference

A Pre-Proposal Conference will be held, during which suppliers will be afforded the opportunity to meet with the Lead State Procurement Official, listed in Section II.A, RFP Contact, and discuss the RFP and the procurement process. Suppliers are encouraged to attend the Pre-Proposal Conference. The time, date, and place of the conference is listed in Section II.D, Important Dates.

Suppliers are encouraged to submit questions in advance to the Lead State Procurement Official, listed in Section II.A, RFP Contact, so they can be addressed during the Pre-Proposal Conference. The Lead State may also accept oral questions during the conference and will make a reasonable attempt to provide answers prior to the conclusion of the conference. Oral answers shall not be binding on the Lead State. After the conference, the Lead State will publish a written Question and Answer set addressing all submitted questions on the RFP Website listed in Section II.B.

F. How to Ask Questions

Offerors requiring clarification on the intent or content of the RFP or on procedural matters regarding the competitive procurement process may request clarification by submitting questions, in an email clearly referencing the RFP number, to MAU2mailbox@dgs.ca.gov.

Official responses to questions will be posted on the RFP Website identified in Section II.B.

Question and answer sets will be provided to all Offerors without identifying the submitters. At the sole discretion of the Lead State, questions may be paraphrased by the Lead State for clarity and to maintain anonymity. Oral answers shall not be binding on the Lead State.

To ensure a response, questions must be received by the deadline listed in Section II.D, Important Dates.

An Offeror who desires clarification or further information on the content of the RFP, but whose questions relate to the proprietary aspect of that Offeror's proposal and which, if disclosed to other Offerors, would expose that Offeror's proposal, may submit such questions in the same manner as above, but also marked "CONFIDENTIAL", and not later than the scheduled date specified in Section II.D, Important Dates, to ensure a response. The Offeror must explain why any questions are sensitive in nature.

If the Lead State concurs that the disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered, and both the question and answer will be kept in confidence. If the Lead State does not concur with the proprietary aspect of the question, the question will not be answered in this manner, and the Offeror will be so notified.

G. How to Respond

Offerors responding to this RFP must:

1. Read and review this RFP, including all attachments, exhibits, and addenda.
2. Prepare a proposal that:

a. Follows the requested format (refer to Section IV, Offeror Proposal);
b. Includes the RFP Number on all materials making up the proposal;
c. Addresses each question and request for a response in this RFP, including all requirements outlined in Attachment 7 – Offeror Proposal Requirements and Attachment 8 – Offeror Information, Acknowledgements, and Certifications and questions in Attachment 9 – Offeror Response Worksheet;
d. Clearly demonstrates Offeror's ability to meet the Scope of Work described in Section III and Attachment 2 – Scope of Work; and
e. Includes all required submissions identified in Section IV, Offeror Proposal.

3. Submit proposal by the RFP Close Date identified in Section II.D, Important Dates, to the Proposal Submission Email address below:

Proposal Submission Email: MAU2mailbox@dgs.ca.gov

III. SCOPE OF WORK

A detailed description of the deliverables being sought through this RFP is attached as Attachment 2 – Scope of Work.

This RFP includes Automotive Parts in 20 categories. Offerors must bid on all 20 categories to be evaluated for award. It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, or a single contractor, at Lead State's discretion in accordance with Attachment 3 – RFP Evaluation Plan. The Lead State reserves the right to eliminate any specific category from the final award.

The initial term of the Master Agreement(s) resulting from this RFP is anticipated to be five (5) years from the Master Agreement effective date, with the option to exercise renewals totaling up to an additional two (2) years following the initial term, upon mutual agreement by the Lead State and Contractor.

The scope of this RFP and its resulting Master Agreement(s) is intended to benefit all state departments, institutions, agencies, and political subdivisions and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories. Therefore, **Offerors should not interpret the Scope of Work to be associated with or limited to any specific purchase, implementation, project, need, or program** within the Lead State or any other state or eligible entity.

Proposals should be generally applicable to all potential Participating Entities and Purchasing Entities, except where specificity is requested.

IV. OFFEROR PROPOSAL

A. General

1. Proposals must be received by the RFP Close Date specified in Section II.D, Important Dates. Proposals received after the RFP Close Date will not be considered; therefore, it is the responsibility of the Offeror to make sure their proposal is received on time.

2. Proposals must be submitted as follows:

    a. Proposals shall be sent to the **Proposal Submission Email** (MAU2mailbox@dgs.ca.gov).
    b. Proposals shall not be sent to any other mailbox.
    c. Emailed proposals should clearly identify in the email subject line "Offeror Name – Proposal for RFP 0000037049."

3. Links to files stored on the internet (e.g., Google Drive, Dropbox) in lieu of attachments are not acceptable, and any documents stored at such links will not be reviewed.

4. Emailed submissions should not exceed 25 megabytes (MB). The Lead State's mail server may automatically reject excessively large emails. If file size exceeds 25 MB, then multiple emails should be submitted and labeled "Email 1 of 2", "Email 2 of 2", etc. If the proposal is separated into multiple emails, the Offeror assumes the risk of the proposal not being completely received. Only emails received by the RFP Close Date identified in Section II.D will be accepted.

5. Cost information must be submitted as a separate attachment and included in Attachment 10 – Cost Proposal only. If any cost is included in documents other than Attachment 10 – Cost Proposal, the Offeror's proposal may be deemed non-compliant.

6. The Lead State requests that Offerors do not submit unnecessary documentation in their proposal. The Lead State expects only documentation which pertains to the requested/required information to be submitted as outlined in the RFP. Additional information not specific to the requirements of the RFP should not be submitted (e.g. company literature, marketing materials, etc.).

B. Required Submissions (Proposal Contents)

Offerors must submit the documents listed in RFP Table 2 with their proposal. Offerors are required to provide documents listed in RFP Table 3 and RFP Table 4 when notified by the Lead State.

RFP Table 2: Documents required with Proposal

Description	RFP Reference
Attachment 8 – Offeror Information, Acknowledgements, and Certifications	Attachment 7, Section 1.2
Attachment 9 – Offeror Response Worksheet	Attachment 7, Section 1.4
California Civil Rights Laws Certification	Attachment 7, Section 2.1
Bidder Declaration Form (GSPD-05-105)	Attachment 7, Section 2.11
TACPA Request Form (Std. 830) (only if claiming a TACPA preference)	Attachment 7, Section 2.13.5
Attachment 10 – Cost Proposal ***(Must be a separate attachment)***	Attachment 7, Section 3

RFP Table 3: Documents requested with proposal, required within five (5) business days after notification from the Lead State

Description	RFP Reference
Darfur Contracting Act Certification, if applicable	Attachment 7, Section 2.3
Federal Debarment Certification	Attachment 7, Section 2.4
California Seller's Permit	Attachment 7, Section 2.7
California Secretary of State (SOS) Certification Information and Fictitious Business Name Statement, if applicable	Attachment 7, Section 2.8
Payee Data Record (STD 204)	Attachment 7, Section 2.10
Disabled Veteran Business Enterprise Declaration Form DGS PD 843 (if applicable)	Attachment 7, Section 2.15
Manufacturer's Summary Form (DGS PD 525) Goods only (only if claiming a TACPA preference)	Attachment 7, Section 2.13.5
Bidder's Summary Form (DGS PD 526) Goods and services (only if claiming a TACPA preference)	Attachment 7, Section 2.13.5

RFP Table 4: Documents required within 10 business days after notification from the Lead State

Description	RFP Reference
Customer Reference Forms	Attachment 7, Section 1.5

The Lead State makes no warranty that the list of applicable documents is a full and comprehensive listing of every requirement specified in the RFP. Checking off the items on the list does not establish your firm's intent nor does it constitute responsiveness to the requirements. The list is only a tool to assist participating Offerors in compiling their proposal response.

Offerors are encouraged to carefully read the entire RFP. The need to verify all documentation and responses prior to the submission of proposals cannot be over emphasized.

C. Other Documents

The following are informational only and should **not** be submitted with an Offeror's proposal:

- APP Cover Page
- This RFP Overview
- Attachment 1 – RFP Terms and Conditions
- Attachment 2 – Scope of Work
- Attachment 3 – RFP Evaluation Plan
- Attachment 4 – Sample Master Agreement
- Attachment 5 – Participation Information
- Attachment 6 – Protest Information
- Attachment 7 – Offeror Proposal Requirements

V. AWARD PROCESS

Award of Master Agreement(s), if made, will be in accordance with Attachment 3 – RFP Evaluation Plan, to responsible Offeror(s) whose proposal complies with all the requirements of the RFP documents and any addenda thereto, except for such immaterial defects as may be waived by the Lead State. Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to NASPO ValuePoint for approval of the proposed awards.

Attachment 1
RFP TERMS AND CONDITIONS

This attachment outlines the applicable terms and conditions for this Request for Proposal (RFP).

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

This RFP and Offeror's participation therein is subject to the following terms and conditions.

I. DEFINITIONS

A. **Award** or **award** means the identification of Offerors eligible to execute a Master Agreement following completion of the Lead State and Multistate Sourcing Team's evaluation in accordance with Attachment 3 – RFP Evaluation Plan.
B. **Confidential Information** means any and all information in any form that is marked as confidential or would by its nature be deemed confidential and is obtained by Offeror in connection with this RFP, including but not limited to the data or records of the Lead State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.
C. **Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.
D. **Day** means a calendar day, unless otherwise indicated.
E. **Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
F. **Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
G. **Lead State** means the State issuing this RFP.
H. **Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint.
I. **Multistate Sourcing Team** means the group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this RFP, evaluation of proposals, negotiation of Master Agreements, and evaluation of Contractor performance.
J. **NASPO** means the National Association of State Procurement Officials.
K. **NASPO ValuePoint** means the cooperative contracting division of NASPO.
L. **Offeror** or **bidder** means an entity or individual submitting a proposal in response to this RFP.

M. **Order** means a purchase order, sales order, agreement, or other document used by a Purchasing Entity to commit funds in exchange for a Contractor's delivery of one or more Deliverables.
N. **Participating Addendum** means a contract, referencing a Master Agreement, that is executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
O. **Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
P. **Proposal** or **proposal** means the document(s), data, information, and other media submitted by an Offeror in response to this RFP, including information submitted directly through the RFP Website and information submitted after the RFP Close Date at the request of the Lead State.
Q. **Purchasing Entity** means a state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum.
R. **RFP** means this request for proposals, including all addenda, attachments, and exhibits and any information posted by the Lead State to the RFP Website.
S. **RFP Close Date** means the date and time identified in Section II.D of the RFP Overview.
T. **RFP Contact** means the individual identified in Section II.A of the RFP Overview.
U. **RFP Open Date** means the date and time identified in Section II.D of the RFP Overview.
V. **RFP Q&A Deadline** means the date and time identified in Section II.D of the RFP Overview.
W. **RFP Website** means the website identified in Section II.B of the RFP Overview.
X. **Solicitation Number** means the number identified on the cover page of the RFP Overview and in the header of each attachment to this RFP.

II. GOVERNING LAW AND VENUE

A. This RFP and Offeror's participation in it is governed by and construed in accordance with the laws of the Lead State.
B. Unless otherwise specified in this RFP, the venue for any protest, claim, dispute, or action relating to this RFP, including evaluation and award, is in the state serving as the Lead State.
C. Any claim relating to this RFP brought in a federal forum must be brought and adjudicated solely and exclusively within the United States District Court for the Lead State.
D. Offeror and Offeror's participation in this RFP must comply with all applicable federal, state, and local laws, rules, and policies.
E. All Deliverables proposed by Offeror must comply with all applicable federal, state, and local laws, rules, and policies.

III. RFP DOCUMENTS

A. RFP Website

1. The RFP Website is the sole source for official RFP documents and updates. The Lead State may, but is under no obligation to, notify Offeror of updates to the RFP Website, including the posting of RFP addenda.
2. Documents from this RFP may be posted on multiple websites, including non-Lead State procurement solicitation boards and the NASPO ValuePoint website, or distributed through other channels, such as email. Such distribution is for advertising and informational purposes only, and documents and information from sources other than the RFP Website should not be relied upon to develop or submit a proposal. Proposals or questions submitted through any means other than those specified in this RFP will not be addressed or considered by the Lead State.

B. RFP Addenda

1. The Lead State may, at any time and in its sole discretion, issue one or more addenda to this RFP. Information shared orally or in informal communications will not be considered an addendum unless explicitly stated in the communication or documented in writing on the RFP Website.
2. Offerors may, through the process described in this RFP for asking questions, propose changes to the RFP, including adjustment of deadlines. The Lead State is not obligated to consider any proposed change.
3. If any supplier determines that an addendum unnecessarily restricts its ability to submit a proposal, supplier is allowed five (5) business days to ask a question or request a change.
4. The Lead State may extend any deadline given to Offerors during the RFP process, including the RFP Close Date and RFP Q&A Deadline.
5. The Lead State may make corrections or clarifications to the RFP.
6. Offeror is wholly responsible for reviewing addenda and updates to the RFP Website, acknowledging addenda as required, and submitting a proposal that is responsive to and compliant with the RFP as modified.

C. Waiver

1. The Lead State may waive any requirement in this RFP if the Lead State determines that waiver is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Waiver of a requirement will not be construed as waiver of any other requirement in this RFP.

3. The Lead State may waive immaterial deviations or defects in an Offeror's proposal in accordance with Section III.E, Identification of RFP Requirements.

D. Conflicts and Issues

1. The following should be brought to the attention of the Lead State using the process described in this RFP for asking questions as outlined in RFP Overview, Section II.F:
   a. Any alleged conflict among the materials composing this RFP; and
   b. Any alleged issue relating to the content of this RFP, including instructions, requirements, or specifications alleged to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful.
2. Any protest, claim, dispute, or action based upon a conflict or issue described in Subsection 1.a or Subsection 1.b will be filed no later than the RFP Close Date. Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described in Subsection 1.a or Subsection 1.b if not filed by the RFP Close Date.
3. If the RFP contains an error known to the Offeror, or an error that reasonably should have been known, the Offeror shall submit a proposal at its own risk. If the Offeror fails to notify the Lead State of the error prior to RFP Close Date and is awarded a Master Agreement, the Offeror shall not be entitled to additional compensation or time by reason of the error or its later correction.

E. Identification of RFP Requirements

1. Requirements

Lead State has established certain requirements with respect to proposals submitted by Offerors. The use of "shall," "must," or "will" (except to indicate simple futurity) in the RFP, indicates a mandatory requirement.

A deviation from a mandatory requirement is material if the deficient response is not in substantial accord with the RFP requirements, provides an advantage to one Offeror over other Offerors, or has a potentially significant effect on the delivery, quantity, or quality of items bid, amount paid to the supplier, or on the cost to the Lead State. Material deviations cannot be waived. A deviation, if not material, may be waived by the Lead State. The Lead State's waiver of any immaterial deviation or defect shall in no way modify the RFP documents or excuse the Offeror from full compliance with the RFP requirements if awarded the Master Agreement.

2. Desirable Items

The words "should" or "may" in the RFP indicate desirable attributes or conditions but are non-mandatory in nature. Deviation from, or omission of, such a desirable feature, even if material, will not in itself cause rejection of the proposal.

3. Mandatory Requirements

All items within the RFP labeled mandatory (M) are non-negotiable. A Pass/Fail evaluation will be utilized for all mandatory requirements. By signing the Attachment 8 – Offeror Information, Acknowledgements, and Certifications and submission of a proposal, the Offeror agrees to all mandatory RFP requirements.

4. Non-Mandatory Requirements

This RFP may include both preference programs and product/performance items identified as non-mandatory (NM) requirements. Offerors are not required to comply with these requirements to be compliant with the RFP. However, if an Offeror applies for a preference, the Offeror must meet the applicable preference requirements and provide the required preference documentation as outlined in the relevant section. Offerors who offer the non-mandatory product/performance items in their proposal are required, if awarded, to provide those items for the duration of the resultant Master Agreement.

5. Scored Requirements

This RFP includes mandatory scored (MS) requirements and may include non-mandatory scored (NMS) requirements. Mandatory scored requirements are non-negotiable. Mandatory and non-mandatory scored items will achieve points as identified in Attachment 3 – RFP Evaluation Plan.

6. Narrative Responses

This RFP includes some items that require a narrative response. Those items have been listed on Attachment 9 – Offeror Response Worksheet. Offerors are to provide narrative responses on this attachment only, and only for the items requested. The completed Attachment 9 – Offeror Response Worksheet shall be submitted with the Offeror’s proposal.

IV. PROPOSALS

A. Late Delivery or Non-delivery of Proposal

Offeror is wholly responsible for ensuring Offeror’s proposal is complete and submitted timely to the Lead State in the format required by this RFP. The Lead State will not accept a proposal after the RFP Close Date.

B. Completion of Proposals

Proposals must be complete in all respects in accordance with RFP Overview, Section IV, Offeror Proposal. A proposal may be rejected if it is determined to be conditional, incomplete, if it contains any alterations of form, or contains other irregularities of any kind. A proposal will be rejected if any such defect or irregularity constitutes a material deviation from the RFP requirements.

C. Joint Proposals

Joint proposals will not be accepted for this RFP.

D. Modified and Alternate Proposals

Offeror is expected to submit Offeror's most favorable terms and pricing in its original proposal submitted by the RFP Close Date. The Lead State is under no obligation to provide Offeror an opportunity to modify or submit an addendum to Offeror's original proposal or to submit another proposal, including a best and final offer, prior to final evaluation and award. Alternate proposals will not be accepted unless otherwise specified in this RFP.

E. Withdrawal and Resubmission of Proposals

An Offeror may withdraw its proposal at any time prior to the RFP Close Date by submitting a notification of withdrawal signed by Offeror's authorized representative. The Offeror may thereafter submit a new or modified proposal prior to the RFP Close Date. Modification offered in any other manner, oral or written, will not be considered.

F. Evaluation Process

Proposals will be evaluated in accordance with Attachment 3 – RFP Evaluation Plan.

G. Discussions and Clarifications

During the evaluation and selection process, the Lead State may request the Offeror answer specific questions in writing to clarify its submitted information but will not allow the Offeror to change its proposal.

The Lead State requires assurance that the Offeror selected has all the resources to successfully perform. These include but are not limited to personnel with the skills required; financial resources sufficient to complete performance under the Master Agreement; and experience in similar endeavors. If, during the evaluation process, the Lead State is unable to assure itself of the Offeror's ability to perform under the Master Agreement if awarded, the Lead State has the option of requesting from the Offeror any information that it deems necessary to determine the Offeror's responsibility. If such information is required, the Offeror will be notified and will be permitted three (3) business days to submit the requested information. At its sole discretion, the Lead State reserves the right to extend the Offeror response time to submit the requested information.

H. Cost Proposal

1. Offeror must complete all required elements of Attachment 10 – Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair evaluation of like costs among Offerors. Deviation from the format or structure of the Cost Proposal may result in Offeror's proposal being deemed non-responsive.

2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate and compliant with the solicitation, even if formulas have been provided by the Lead State as a courtesy.

3. Inclusion of cost or pricing information in any document other than the Cost Proposal may result in Offeror's proposal being deemed non-responsive.

4. Offeror's proposed costs must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, and personnel. All costs proposed by Offeror must also be inclusive of the NASPO ValuePoint administrative fee. Proposed costs incorporated into a Master Agreement resulting from this RFP represent not-to-exceed pricing and minimum discounts, where applicable. Except as permitted by Subsection 5, pricing offered to Participating Entities and Purchasing Entities must be no higher than pricing set forth in the Master Agreement.

5. A Participating Addendum may also require payment of an additional administrative fee by Contractors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.

6. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness by the Lead State. Costs determined not to be reasonable or best-value by the Lead State, including any cost to which Offeror's proposed markup or discount is to be applied, may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.

7. At the Lead State's discretion, points earned in the Cost Proposal evaluation may be normalized and scaled to award the Offeror earning the highest total cost score the maximum number of cost points possible.

I. Proposal Contact

1. The Proposal Contact identified by Offeror in Attachment 8 – Offeror Information, Acknowledgements, and Certifications must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact. Offeror is wholly responsible for ensuring communications received by Offeror's Proposal Contact are reviewed and addressed timely by the appropriate personnel.

2. The Lead State may, but is under no obligation to, notify Offeror's Proposal Contact of updates to the RFP Website, including the posting of RFP addenda.

Offeror is wholly responsible for reviewing updates and submitting a proposal that is responsive to and compliant with the RFP as modified.

J. Proposal Development Costs

All costs incurred by Offeror in the preparation and submission of a proposal, including any costs incurred during discussions, clarifications, or demonstrations, are the responsibility of Offeror and will not be reimbursed.

K. Firm Offer

Offeror's proposal will act as a firm offer for 180 days following the RFP Close Date. An Offeror may extend the offer in the event of a delay of agreement award.

L. Ownership and Disclosure of Proposals

1. All documents submitted in response to this RFP will become the property of the Lead State and will be returned only at the Lead State's option at the Offeror's expense. Proposals are public upon posting of Notice of Intent to Award. Offerors should be aware that marking a document "confidential" or "proprietary" in a proposal will not prevent that document from being released after notice of intent to award as part of the public record, in accordance with the California Public Records Act (Government Code section 7920.000 et seq.).
2. Offeror grants Lead State and NASPO a perpetual, irrevocable, non-exclusive, royalty-free, and transferable right to display, modify, copy, and otherwise use the contents of Offeror's proposal, which may be:
   a. Shared with NASPO members;
   b. Shared with entities represented on the Multistate Sourcing Team;
   c. Posted to the NASPO ValuePoint website following execution of Master Agreements for examination by potential Participating Entities and Purchasing Entities;
   d. Subject to disclosure in accordance with applicable public information laws, rules, and policies; and
   e. Subject to retention, archiving, and destruction in accordance with applicable retention laws, rules, and policies.

M. Confidential Information

If Offeror is provided or given access to Confidential Information in connection with this RFP, Offeror will keep the Confidential Information in confidence and will not use the Confidential Information for any purpose other than as directed by the Lead State and as necessary to respond to this RFP. Unless otherwise directed by the Lead State, Offeror will destroy Confidential Information within 30 days of the cancellation of this RFP, rejection or withdrawal of Offeror's proposal, or execution of a Master Agreement between the Lead State and Offeror.

N. Required Signatures

Offeror's failure to have an authorized representative sign any document or attachment requiring a signature, including electronic signatures or certifications, may result in rejection of the proposal by the Lead State. An unsigned proposal shall be rejected.

O. NASPO ValuePoint eMarketPlace

Participation in the NASPO ValuePoint eMarketPlace by Offerors awarded a Master Agreement resulting from this RFP is **mandatory**. By submitting a proposal, Offeror agrees to comply with the requirements, terms, and conditions related to the NASPO ValuePoint eMarketPlace set forth in Attachment 4 – Sample Master Agreement.

V. RIGHTS RESERVED TO THE LEAD STATE

A. RFP Contact and Multistate Sourcing Team.

1. The Lead State may change the RFP Contact at any time. The Lead State will notify potential Offerors of the change via an addendum to this RFP, an email to the Offeror's Proposal Contact, or an update to the RFP Website.
2. The Lead State is not required to disclose the composition of the Multistate Sourcing Team and may, at any time and without notice, change the composition of the Multistate Sourcing Team, provided the composition complies with the Lead State's laws, rules, and policies.

B. Consideration of External Information

The Lead State and Multistate Sourcing Team may consult external sources and consider external information to confirm the responsibility of Offeror, the responsiveness of Offeror's proposal, and the veracity of any representation made by Offeror. Offeror will be given a reasonable opportunity to respond to any external information obtained by the Lead State and Multistate Sourcing Team that materially and negatively affects evaluation of Offeror's proposal. External information does not include information obtained from references provided by Offeror.

C. Errors in the Proposals

1. An error in the proposal may cause the rejection of that proposal; however, the Lead State may at its sole option retain the proposal and make certain corrections.
2. To determine if a correction is appropriate, the Lead State will consider the conformance of the proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP.
3. If the Offeror's intent is clearly established based on review of the complete proposal submittal, the Lead State may at its sole option correct an error based on that established intent.

4. The Lead State may at its sole option correct obvious clerical errors, arithmetic errors, and discrepancies. If necessary, the cost extensions and summary will be recomputed accordingly, if obviously misstated. If the unit price is ambiguous, unintelligible, uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the extended total price by the quantity of the item.
5. The Lead State may at its sole option correct errors of omission, and in the following two (2) situations, the Lead State will take the indicated actions if the Offeror's intent is not clearly established by the complete proposal:
    a. If cost for an item is omitted from the cost data provided in the proposal it will be interpreted to mean that the item will be provided by the Offeror at no cost.
    b. If an item is not mentioned at all in the proposal and is essential to satisfactory performance, the proposal will be interpreted to mean that the item will be provided at no cost.
6. If the re-computations or interpretations, as applied in accordance with this section, result in significant changes in the amount of money to be paid to the Offeror (if awarded the Master Agreement), the Offeror will be given the opportunity to promptly establish the grounds justifying relief from its proposal.
7. It is absolutely essential that Offerors carefully review the cost elements in their proposal since they will not have the option to correct errors after the RFP Close Date.
8. If prior to Master Agreement award, an Offeror discovers a mistake in their proposal which renders the Offeror unwilling to perform under any resulting Master Agreement, the Offeror must immediately notify the RFP Contact and submit a written request to withdraw the proposal. It shall be solely within the Lead State's discretion as to whether withdrawal will be permitted. If the solicitation's evaluation and award methodology indicates an "all or none" award of the items, then any withdrawal must be for the entire proposal.

D. Rejection of Proposals.

The Lead State may reject Offeror's proposal at any time if the Lead State determines that:

- The proposal is non-responsive;
- The proposal has failed to meet any mandatory requirement of the RFP, including any minimum scoring threshold;
- Offeror is not responsible; or
- Offeror has committed a violation of procurement law, rule, or policy.

E. Draft Proposal

At the Lead State's sole discretion, it may declare the proposal to be a "Draft Proposal" if the Lead State determines that proposals from all Offerors contain material deviations. Offerors may not protest the Lead State's determination that all proposals have material deviations. If all proposals are declared noncompliant, the Lead State may issue an addendum to the RFP. Should this occur, confidential discussions will be held with Offerors who are interested in continuing to participate in the bidding process. Notifying the Offeror of defects from the Draft Proposal is intended to minimize the risk that a new proposal submission will be deemed non-compliant; however, the Lead State will not provide any warranty that all defects in the Draft Proposal have been detected. Notification of defects in the Draft Proposal will not preclude rejection of a proposal if undiscovered defects contained in the declared Draft Proposal are later found in the proposal. Oral statements made by either party during confidential discussions shall not be binding.

Each Offeror will be notified of the due date for the submission of a new proposal. This submission must conform to the requirements of the original RFP and, if applicable, any subsequent addenda. The new proposals will be evaluated in accordance with Attachment 3 – RFP Evaluation Plan.

F. Cancellation.

1. The Lead State may cancel this RFP at any time if the Lead State determines that cancellation is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Following cancellation, the Lead State may, at its discretion, re-issue this RFP or issue another RFP for the same or similar Deliverables.

G. Transfer.

1. The Lead State may transfer this RFP to a new Lead State if the Lead State determines that such transfer is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. The Lead State will notify all Offerors of a pending transfer and specify a date, prior to the transfer being made effective, before which Offerors may withdraw a submitted proposal. A proposal submitted to the Lead State and not withdrawn by Offeror prior to a transfer may, at the discretion of the Lead State, be destroyed, returned to Offeror, or shared with the new Lead State for completion of the procurement process in accordance with the laws, rules, policies, and processes of the new Lead State.
3. Upon the effective date of a transfer, all references to "Lead State" in this RFP will refer to the new Lead State. The new Lead State may, at its discretion, modify this RFP in whole, or in part and may, at its discretion, allow Offerors to modify

submitted proposals or allow additional Offerors to submit proposals following transfer of this RFP.

H. No Exclusivity.

1. Master Agreements resulting from this RFP will be established solely for the convenience of Participating Entities. The Lead State, Participating Entities, and Purchasing Entities reserve the right to obtain the same or similar Deliverables from other sources when in their best interest and permitted by applicable law, rule, or policy.

2. The Lead State may, at its discretion, issue a supplemental solicitation during the term of a Master Agreement resulting from this RFP if the Lead State determines that:

   a. There is insufficient competition among Contractors awarded a Master Agreement resulting from this RFP;

   b. The quantity or diversity of Deliverables available through Master Agreements resulting from this RFP is insufficient to meet demand; or

   c. Changes in the industry, market, or technology justify the solicitation of new or supplemental Contractors or Deliverables.

I. Mandatory State Preferences.

The Lead State may apply mandatory evaluation preferences to proposals of eligible Offerors as set forth in applicable laws, rules, policies, or provisions of this RFP. Offeror is wholly responsible for demonstrating eligibility for any applicable preference in Offeror's proposal, including identification of applicable Business Certifications in Attachment 8 – Offeror Information, Acknowledgements, and Certifications. Offerors that meet the requirements for award with an applied preference but would not receive an award without an applied preference may be awarded a contract for use by the Lead State but will not be awarded a NASPO ValuePoint Master Agreement for use by other states and eligible entities.

J. Conditional Awards.

1. Award and execution of a NASPO ValuePoint Master Agreement by the Lead State is conditioned upon the following:

   a. Approval by NASPO ValuePoint;

   b. Approval by any individual or group of individuals required to approve Lead State awards or contracts, including but not limited to legal counsel, an overseeing board, or agency head;

   c. Continued eligibility for award following resolution of any protests received by the Lead State; and

2. Approval of awards and Master Agreements may be in whole or in part.

3. Awards and Master Agreements not approved by NASPO ValuePoint may, at the Lead State's option, result in a contract for use by the Lead State only.
4. Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.
5. Nothing in this section affects Offeror's right to file a protest in accordance with Attachment 6 – Protest Information.

K. Term.

The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement resulting from this RFP for the purpose of making the Master Agreement coterminous with others. If this RFP is a re-solicitation of an existing NASPO ValuePoint portfolio, the Lead State may, at its option, defer the effective date of Master Agreements resulting from this RFP to reduce or eliminate overlap in portfolio terms.

P. Debriefing

A debriefing may be held after Master Agreement award at the request of any Offeror. The discussion will be based primarily on the administrative, technical, and cost evaluations of the Offeror's proposal. A debriefing is not the forum to challenge the RFP specifications or requirements.

VI. POTENTIAL PARTICIPATING ENTITIES

A. Interested States.

1. States that have requested to be named in this RFP as potential participants in the resulting Master Agreement(s) are listed as Interested States in Attachment 5 – Participation Information. This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.
2. The Estimated Annual Volume in Attachment 5 – Participation Information aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. No minimum or maximum level of sales volume is guaranteed or implied.
3. Some Interested States have also provided state-specific terms and conditions that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. Any terms and conditions included in Attachment 5 – Participation Information are being provided for informational purposes only and will not be incorporated into the Master Agreement or

addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

B. Participating Entities.

1. If not proscribed by law or by the Chief Procurement Official of the state in which the entity is located, an entity may be eligible to execute a Participating Addendum directly with a Contractor. Such entities may include:
   a. Political subdivisions, public agencies, and service districts;
   b. Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
   c. Federally recognized tribes;
   d. Quasi-governmental entities; and
   e. Eligible non-profit organizations.
2. Prior to execution of a Participating Addendum with an entity described above, a Contractor must coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

C. Purchasing Entities.

Entities eligible to make purchases from a Participating Addendum will be identified by the Participating Entity in the Participating Addendum.

D. Potential Participation by Canadian Entities.

In addition to potential Participating Entities within the United States, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use a Master Agreement resulting from this RFP, with the approval of the Contractor.

Attachment 2
SCOPE OF WORK

This attachment contains the required deliverables sought through this Request for Proposal (RFP) and the responsibilities Contractors will be expected to perform under a Master Agreement resulting from this RFP.

This Scope of Work will be incorporated as Exhibit B to a successful Offeror's final Master Agreement (Refer to Attachment 4 – Sample Master Agreement). Provisions in the Scope of Work that will be modified by the Lead State to reflect successful Offeror's final awarded agreement are noted in brackets "{ }".

Important Note: By submitting a proposal for this RFP, Offeror agrees to all requirements, terms, and conditions outlined in this Scope of Work without exception. Offerors may not alter information in this Attachment.

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

1. OVERVIEW

This Scope of Work outlines the products and services to be provided by the Contractor under the Automotive Parts Master Agreement ("Master Agreement") for the Lead State and all other Participating Entities. Contractor shall provide a comprehensive portfolio of high-quality automotive parts and serve as the primary point of contact for all matters related to data collection, reporting, and distribution. All performance requirements shall be carried out in accordance with the terms and conditions set forth in this Master Agreement.

2. LEAD STATE AND CONTRACTOR RESPONSIBILITIES

A. The Lead State will assign a Lead State Contract Administrator to be the contact person for administration and issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the Lead State Contract Administrator, or their designee, through a Master Agreement amendment. The Lead State Contract Administrator information will be provided to the Contractor upon award of the Master Agreement.

B. Contractor shall assign a Contract Manager to serve as a single point of contact for all Master Agreement inquiries and contractual issues. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor. Prior to Master Agreement execution, the Contractor shall provide its Contract Manager's name, address, telephone number, and e-mail address to the Lead State Contract Administrator within five (5) business days of the Lead State's written request.

C. Should the Contractor's Contract Manager or the Lead State Contract Administrator change, each party will notify the other in writing, without amendment to the Master Agreement. Any changes to the Contractor's Contract Manager must be reported to the Lead State Contract Administrator within five (5) calendar days of the change. The Contractor must also notify Participating Entities with active Participating Addenda of any such change.

D. Contractor shall make technically competent personnel available to the Lead State to accomplish the tasks and deliverables for the implementation and management of the Master Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator, in writing, of any unresolved issues or problems related to the Master Agreement that have been outstanding for more than five (5) business days.

3. SCOPE OF PRODUCTS

Contractor shall provide Automotive Parts products to Purchasing Entities in the categories listed below:

1) Air Conditioning
2) Alternators and Starters
3) Batteries
4) Bearings (Ball and Roller)
5) Belts and Hoses
6) Brakes
7) Electrical and Ignition
8) Emissions, Sensors, and Exhaust
9) Engine and Drive Train
10) Filters (Oil, Gas, Air, and Transmission)
11) Gaskets and Seals
12) Heating and Cooling (Engine)
13) Lamps, Lighting, and Mirrors
14) Oils, Chemicals, Fluids, and Lubricants
15) Pumps (Fuel and Water)
16) Suspension (Shocks and Struts) and Steering
17) Wipers
18) Winter Accessories
19) General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)
20) Automotive Repair Shop Supplies, Equipment and Tools (e.g., windshield repair kits, wrenches, etc.)

Automotive Parts include any of the mechanical, electrical, and structural components that make up a motor vehicle or contribute to its operation and safety. The term “automotive” specifically refers to road-going motor vehicles designed for transporting people or goods on land.

Products intended for use in air, sea, rail, or non-motorized vehicles are outside the scope of this agreement.

Only items that fall within the defined Automotive Parts categories above may be purchased under the Master Agreement.

4. ELECTRONIC CATALOG

A. Automotive Parts Electronic Catalog

Contractor shall develop and maintain a dedicated electronic catalog for use by Purchasing Entities to view Master Agreement products and pricing. Contractor’s electronic catalog must be separate from the Contractor’s commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.

B. Electronic Catalog/Contract Website Contents

The Lead State Contract Administrator will review and determine the acceptability of the electronic catalog format and data. The electronic catalog shall contain the following data elements at minimum:

- Item description
- Contractor’s stock keeping number (SKU)
- Unit of measure (UOM)
- Quantity in the UOM
- List Price/Manufacturer Suggested Retail Price (MSRP)
- Master Agreement price
- Quote generation (if applicable)
- Publicly available original equipment manufacturer (OEM) price lists (current and archives)

Within 30 calendar days of notice of award, Contractor will be required to provide the electronic catalog for Lead State Contract Administrator approval.

C. Availability

The electronic catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance times. Contractor shall not have any catalog viewing access restrictions for the Lead State, Participating Entities, or Purchasing Entities.

5. PRICING

A. Category Discounts

Contractor shall provide Automotive Parts to Participating Entities and Purchasing Entities at or above the minimum discount-off MSRP provided in {Attachment 4 – Sample Master Agreement} Exhibit C, Category Discounts.

Category discounts will remain firm as the minimum discount for the entire term of the Master Agreement, including extension periods. However, Contractors may offer lower pricing on a per-order basis to Purchasing Entities.

In the event a product falls into two or more categories, the highest category discount will be applied.

B. Promotions

Contractor may offer promotional discounts, including but not limited to statewide or national promotional discounts, customer location specific discounts, bulk discounts, or spot discounts.

During special pricing promotions, the Contractor shall offer Purchasing Entities the promotional pricing or the Master Agreement pricing, whichever is lower.

Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

6. RETAIL SALES ESTABLISHMENTS

Contractor shall provide Retail Sales Establishments for use by Participating Entities and Purchasing Entities under the Master Agreement. Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide:

- Walk-in and will-call order system during regular work hours.
- Customer service associate(s) to support walk-in and will-call order systems.
- Itemized sales receipts for all walk-in and will-call transactions.
- Availability of delivery.
- Acceptance of a purchasing card.

These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities.

Contractor shall ensure Participating Entities and Purchasing Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

Contractor shall provide a list of authorized retail sales establishment locations to be used on the Master Agreement to the Lead State within 15 calendar days of notice of award. The approved authorized retail sales establishment location listing will be posted on the Lead State's website and the NASPO ValuePoint website. During the term of the Master Agreement, Contractor shall notify the Lead State Contract Administrator in writing of any updates to the authorized retail sales establishment location listing (e.g. additions, deletions, changes).

7. ORDERING

Contractor shall comply with ordering requirements set forth below, in addition to the provisions specified in {Attachment 4 – Sample Master Agreement} Exhibit A, Section VII (Ordering).

A. Ordering Methods

1) Contractor shall accept orders through the following methods:

   - Electronic (email) – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of the Master Agreement.
   - U.S. Mail – Contractor must have the capability to receive orders by mail in place before the commencement of the Master Agreement.
   - Over-the-counter/Walk-In – Contractor shall provide over-the-counter order and delivery at all commercial locations listed on the authorized Retail Sales Establishment listing in accordance with Section 6, Retail Sales Establishments.
   - Online (internet) – Contractor's dedicated electronic catalog website to be used by Purchasing Entities for viewing Master Agreement products and placing orders must be in place before the commencement of the Master Agreement in accordance with Section 4, Electronic Catalog.

2) Contractor may accept orders through the following method:

   - Fax machine – If offered, a toll-free fax machine number to be used by Purchasing Entities for placing orders must be in place before the commencement of the Master Agreement. Fax machine orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone where the order is placed.

3) Contractor shall provide ordering information for Purchasing Entities within five (5) business days of written request from the Lead State and/or Participating Entity.

B. Purchase Execution

Purchasing Entities will submit orders directly to the Contractor using one of the ordering methods listed in Section 7.A, Ordering Methods.

Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.

C. Minimum Order/Shipping Amount

Contractor shall not impose any minimum order requirements, whether based on quantity or dollar value, or minimum shipping amount for any order placed under the Master Agreement.

D. Order Acknowledgement

Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/fax within one (1) business day after receipt of an order. The acknowledgement will include:

- Purchasing Entity Name
- Purchase Order Number
- Description of Goods / SKUs
- Total Cost
- Anticipated Delivery Date
- Identification of any Out of Stock/Discontinued Items

E. Out-of-Stock / Discontinued Item Remedy

Upon receipt of order acknowledgment identifying out of stock or discontinued items, the Purchasing Entity shall have the following options:

- Amend the purchase document to reflect a substitute item approved by the Purchasing Entity
- Request back order
- Cancel the item from the order with no penalty

Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make substitutions or cancellations without authorization from the Purchasing Entity.

F. Core Exchange/Charges

All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.

G. Remanufactured Parts

Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

8. DELIVERY

Contractor shall comply with delivery requirements set forth below, in addition to the provisions specified in {Attachment 4 – Sample Master Agreement} Exhibit A, Section VIII (Shipping and Delivery).

A. Delivery Locations

Deliveries are to be made to the Purchasing Entity's location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.

B. Delivery Schedule

Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity.

Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs.

Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.

C. Delivery from Retail Sales Establishments

Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within four (4) hours. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

D. Security Requirements for Institutions

Deliveries may be made to locations inside secure grounds that require prior clearances or special entry procedures to be followed for delivery drivers.

Security procedures may vary from facility to facility. The Contractor will be responsible for contacting the secure location for security procedures, hours of operation for deliveries and service, dress code, and other rules of delivery.

Deliveries that are delayed due to drivers not being cleared to enter secure grounds may be cause for contract default.

E. Free on Board (F.O.B.) Destination (Shipping Terms)

All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the Purchasing Entity, except for the responsibility for latent defects, fraud, and warranty obligations.

All emergency or rush deliveries that require special shipping and handling should be at the Purchasing Entity's expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error, all shipping costs shall be paid by the Contractor.

9. MANUFACTURER WARRANTY

Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. Contractor shall be the main point of contact for all warranty issues and shall facilitate any necessary contact between the Purchasing Entity and the manufacturer.

Parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog.

Statement of warranty is to be provided by Contractor with items delivered under the Master Agreement.

10. RETURN POLICY

Items purchased under the Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery.

All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by fax or e-mail.

11. CREDIT POLICY

Contractor shall accept returns for up to 30 calendar days after delivery. A full credit/refund shall be offered for the following items:

- Items shipped in error
- Defective or freight-damaged items
- Unopened product (returned within 30 calendar days of delivery)

Additionally, a full credit/refund shall be provided for products that do not in substantially conform with the specification requirements regardless of time of notification.

Contractor may charge a restocking fee for returns that do not meet the reasons above. In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. Restocking fees can be no greater than 10 percent of the value of the items needing re-stocking.

All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by fax or e-mail. Shipping or freight costs for returned items that were shipped in error, defective or freight-damaged shall be paid by the Contractor.

Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Section 9, Manufacturer Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.

12. PRODUCT RECALL PROCEDURES

Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number, and disposition instructions.

Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues. Contractor shall issue replacement of product or credit for any product removed or recalled. Each Purchasing Entity shall have the option of accepting either replacement product or credit in exchange for recalled/removed products.

13. INVOICING AND PAYMENT

A. Invoices

Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum:

- Purchasing Entity Order Number (Purchase Order Number)
- Purchasing Entity Name
- Delivery address of the order
- Product(s) description
- Manufacturer's product(s) number(s)
- Quantities of merchandise issued
- Price(s) per unit(s) and extended price
- Date ordered
- Date delivered
- Listing of returns or back ordered items
- Discounts (i.e. Cash Discounts, Prompt Payment, etc.)
- Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency
- Any other mutually agreed upon requirements

14. REPORTING

A. Lead State Usage Report

During the term of the Master Agreement, Contractor shall submit usage reports on a monthly basis for all invoiced purchase orders from California Purchasing Entities to the Lead State Contract Administrator.

Usage report shall contain the following data elements at a minimum:

- Ordering Agency Name (California Purchasing Entity)
- Agency Type (State/Local)
- Purchase Order Number
- Order Date
- Category
- Manufacturer Part Number (OEM #)
- Item Description
- Unit of Measure
- Quantity
- List Price/MSRP
- Unit Price
- Extended Price Paid

Tax must not be included in the report, even if it is on the purchase order.

The Lead State Contract Administrator will provide the reporting template upon award. The Lead State reserves the right to modify the reporting template and require Contractor to provide additional order information during the term of the Master Agreement.

The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov.

Reports are due by the 15th day following the end of each month. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement.

The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five (5) business days of the date of written notification from the Lead State Contract Administrator.

Amendment for term extensions may be approved only if all reports due have been submitted to the Lead State.

B. Participating Entity Reporting

Contractor must provide usage reporting to Participating Entities as defined in the individual Participating Addendum.

C. Ad Hoc Reporting

Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form, and the use of such data shall not be restricted.

Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and be delivered to the Lead State on a monthly or quarterly basis.

D. Lead State Administrative Fee

Contractor shall remit a Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting period. Prices submitted shall not reflect the Lead State administrative fee. The Lead State administrative fee shall not be invoiced or charged to Purchasing Entities and is specific to California only.

This fee will be due to the Lead State on the 30th day following the end of the reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders from a Purchasing Entity.

Payment may be made in the form of an electronic payment using the LPA Payment Portal website or by submitting a check payable to the State of California, Department of General Services. Administrative fee payments made by check must include the Master Agreement on the check and be submitted to the following address:

Department of General Services
Procurement Division
Attn: MAPS Payment Processing
707 Third Street, 2nd Floor
West Sacramento, CA 95605

Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this Master Agreement.

15. MANAGEMENT AND CUSTOMER SERVICE

A. Contractor Responsibility

Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors.

Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval.

Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, and warranty issues for the term of the Master Agreement and any extensions.

Use of subcontractors will be addressed within each Participating Entity's Participating Addendum.

B. Customer Service Unit

Contractor will have a customer service unit that supports Participating Entities. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours.

The customer service unit shall be staffed with individuals who:

- Are trained in the requirements of this contract
- Have the authority to take administrative action to correct problems that may occur
- Are designated for training and general customer service follow-up

Contractor shall respond to customer inquiries within one (1) business day of initial contact.

Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

C. Contractor Name Change

Contractor shall notify the Lead State of any legal business name change. Upon receipt of legal documentation of the name change the Lead State will process an amendment to change the name listed on the Master Agreement. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

16. TRANSITION PLAN / END OF AGREEMENT

Contractor agrees that at the end of the Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested, to ensure that an efficient and effective transition takes place.

Upon termination or expiration of the Master Agreement the following will occur:

- All online offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website.
- Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator.
- No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission from the Lead State Contract Administrator.
- All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

17. LEAD STATE REQUIREMENTS

The following requirements are specific to all purchases for California Purchasing Entities only and may be incorporated within other Participating Entity's Participating Addenda at the Participating Entity's discretion.

A. Lead State General Provisions

The Lead State's Non-Information Technology – General Provisions outlined in {Attachment 4 – Sample Master Agreement} Exhibit D will be applicable for all orders placed under the Master Agreement by California Purchasing Entities.

B. Generative Artificial Intelligence (GenAI) Disclosure and Obligations

Contractor shall comply with the GenAI Disclosure and Obligations requirements specified in {Attachment 4 – Sample Master Agreement} Exhibit D, Section 16 entitled "Generative Artificial Intelligence" for all California Purchasing Entity orders.

B. Payment

California Purchasing Entities may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 10.2 of {Attachment 4 – Sample Master Agreement} Exhibit D.

C. State of California Purchase Card (CAL-Card) Invoicing

For California Purchasing Entity orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card account holder. The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and be identified as "paid by CAL- Card". For additional information, visit the CAL-Card Program website.

C. Environmentally Preferrable Purchasing (EPP)

California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).

D. Post-Consumer Recycled Content (PCRC) Certification

California state agencies are required to report purchases made within 16 product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217. In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request by a California Purchasing Entity.

E. Green Product Marking and Labeling

Contractor shall identify products that possess third party environmental certifications on the dedicated electronic catalog.

F. Mercury Containing Products

A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury.

Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6).

G. Consumer Products

Contractor may not sell, supply, offer for sale, or manufacture for sale, in California, consumer products that do not comply with Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation. (Sections 94507-94517)

H. Brake Friction Material

All motor vehicle brake friction materials sold in California must comply with California Health and Safety Code Section 25250.51 for concentrations of certain heavy metals and asbestiform fibers.

Attachment 3
RFP EVALUATION PLAN

This attachment describes how the Lead State will evaluate Offeror proposals. It is the Lead State's intent to conduct a comprehensive and impartial evaluation of all proposals received.

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

1. RECEIPT

Each proposal will be date and time marked as it is received. Offeror Proposal emails will not be opened by the Lead State Procurement Official until the required proposal submission due date and time.

Attachment 10 – Cost Proposal shall remain unopened until the evaluation of all administrative and technical requirements is completed. Cost data will only be opened for responsive proposals from responsible Offerors. A public cost opening will be held through Microsoft Teams. All participating Offerors and interested parties shall be notified as to the date and time of the public cost opening and a link to join the Microsoft Teams meeting will be provided.

2. EVALUATION OF PROPOSALS / INITIAL RESPONSIVENESS

Proposals will be reviewed for completeness and initial responsiveness. Proposals omitting required documents or responses may be rejected in accordance with Attachment 1 – RFP Terms and Conditions.

All mandatory requirements will be evaluated on a pass/fail basis. If a proposal fails to meet an RFP requirement, the Lead State will determine if the deviation is material as defined in Attachment 1, Section III.E, Identification of RFP Requirements. A material deviation on a mandatory requirement, whether or not it is scored, will be cause for rejection of the proposal. If a deviation is determined to be immaterial, it will be processed as if no deviation had occurred. Scored requirements will be scored in accordance with Section 3, Proposal Scoring Criteria.

For evaluation purposes, certain requirements have been designated as scored requirements and will be scored in accordance with the criteria contained herein. The Lead State will convene a team of evaluators ("Evaluation Team") from the Multistate Sourcing Team to review scored requirements.

3. PROPOSAL SCORING CRITERIA

The Lead State and Evaluation Team will evaluate and score the responses of each Offeror's proposal to determine a Total Score. The maximum points are 2000, not including applicable preferences and incentives. The Total Score includes a non-cost and cost scoring category with scoring criteria as follows:

Scoring Criteria	Total Available Points
Non-Cost Score	
Customer References (Attachment 7, Section 1.5)	150
Narrative Responses (Attachment 9, Section 2)	
• Scope of Work (Question 2.1)	100
• Electronic Catalog Capabilities (Question 2.2)	200
• Pricing Accuracy (Question 2.3)	150
• Retail Sales Establishments (Question 2.4)	150
• Implementation of the NASPO ValuePoint Master Agreement (Question 2.5)	50
Non-Cost Score Subtotal:	**800**
Cost Score	
Average Discount (Attachment 10 – Cost Proposal)	1200
Cost Score Subtotal:	**1200**
Total Possible Points	**2000**

The Lead State will determine the Total Score for each Offeror by aggregating the points applied for all scoring categories. All calculations will be rounded to two (2) decimal places. Scores will be calculated as described within this section.

3.1. Non-Cost Score

The Non-Cost Score will be determined by evaluating the Offeror's responses to the Mandatory-Scored requirements.

3.1.1. Customer References

For evaluation purposes, the Lead State will evaluate the rating (provided by the customer reference) as the number of points the Offeror will receive per question (i.e., a rating of 5 will result in 5 points).

Each customer reference may receive a maximum of 50 points. The total points for customer references will be determined by aggregating the points for each of the three (3) customer references. It is possible to arrive at a total of 150 points.

All customers on the required Customer References (and any other customers the Lead State may select) may be contacted. It is the Offeror's responsibility to ensure customers used as references are aware the Lead State may make contact to validate the reference information. If the Lead State contacts a customer reference and they do not respond within the time frame given, the reference will receive zero (0) points. The Lead State reserves the right to request further clarification.

3.1.2. Narrative Responses

The Evaluation Team will rate each of the Offeror's narrative responses to Mandatory Scored (MS) requirements listed in **Attachment 9 – Offeror Response Worksheet** based on the rating table below.

Evaluator ratings will be averaged to determine an average rating per Offeror per question. Offeror's average rating will be divided by the available rating to determine the percentage of awarded points per question. The percentage will be multiplied by the number of points available for the question to determine the Offerors' total awarded points.

Rating	Scoring Guidelines	Evaluator's Rating
Marginal	Response partially answers question/requirement or minimally addresses topics. Response has minimal strengths and some weaknesses.	25
Moderate	Response answers most of the question/requirement, but does not provide a clear understanding of how the requirement is met. Response has minimal strengths that clearly outweigh weaknesses.	50
Good	Response answers all of the question/requirement, contains some strengths and/or only has minor weaknesses.	75
Excellent	Response answers all of the question/requirement completely, exceeds the requirements and exhibits a strong and unique approach with multiple strengths.	100

<u>Example</u>:

- For *Electronic Catalog Capabilities* the Average Evaluator Rating is 87.5.
- Average Rating (87.5) / maximum available rating (100) = Percentage of Points (87.5%)
- Percentage of Points (87.5%) X total points available (200) = 175
- Offeror will receive 175 points for *Electronic Catalog Capabilities.*

3.1.3. Cost Score Calculation

All Attachment 10 – Cost Proposals opened following the public cost opening will be checked for mathematical accuracy.

The “Average Discount” from the Attachment 10 – Cost Proposal will be used to determine cost points using the following methodology:

Step One: Determine the highest Average Discount percentage for all Offerors.

Example:

Offeror	Average Discount Percentage
Offeror 1	84%
Offeror 2	70%
Offeror 3	42%
Offeror 4	60%

Offeror 1 has the highest Average Discount.

Step Two: For each Offeror’s Average Discount, use the highest discount as the DENOMINATOR and the respective Offeror’s “Average Discount” as the NUMERATOR.

Example:

Offeror	Offeror’s Average Discount (NUMERATOR) / Highest Average Discount (DENOMINATOR)	Cost Factor
Offeror 1	$\frac{84\%}{84\%}$	= 1.00
Offeror 2	$\frac{70\%}{84\%}$	= 0.83
Offeror 3	$\frac{42\%}{84\%}$	= 0.50
Offeror 4	$\frac{60\%}{84\%}$	= 0.71

These results are referred to as the Cost Factor.

Step Three: Multiply each Offeror's Cost Factors by the points available to obtain the Offeror's Cost Score.

Example:

Offeror	Cost Factor for Percentage Discount (a)	Total Cost Maximum Points Available (b)	Score for Item (a x b)
Offeror 1	1.00	1200	1200
Offeror 2	0.83	1200	996
Offeror 3	0.50	1200	600
Offeror 4	0.71	1200	852

3.1.4. Total Score

The Total Score will be calculated by aggregating the Non-Cost Score and the Cost Score.

Example:

Offeror	Non-Cost Score (a)	Cost Score (b)	Total Score (a + b)
Offeror 1	650	1200	1850
Offeror 2	700	996	1696
Offeror 3	650	600	1250
Offeror 4	750	852	1602

These are the total scores before award of any preference and/or incentive points.

3.1.5. California Small Business Preference Calculation

If the Small Business (SB) preference is to be applied to a qualified Offeror's Total Score, the following formula will be utilized:

SB Preference Points = (Highest Non-Small Business Total Score) multiplied by (5 percent)

SB Preference Points will be added to the total score of responsive proposals eligible to receive the preference.

Example:

- Highest non-small business' Total Score: 800 points
- SB Preference formula would calculate to 800 points multiplied by 0.05 = 40 points
- The 40 points would be added to the Total Score for all Offerors who qualify for this preference.

3.1.6. California Target Area Contract Preference Act (TACPA) Preference Calculation

The TACPA preference will be applied to a qualified Offeror's total cost in accordance with Government Code Section 4530 et seq.

4. SELECTION AND AWARD

The Master Agreement will be awarded on an "All or None" basis to the responsive and responsible Offeror with the highest Total Score, including all applicable preference points.

The Lead State reserves the right to make additional awards to responsive and responsible Offerors if the Offeror's proposal is within twenty-five percent (25%) of the proposal with the highest Total Score including all applicable preference points.

5. NEGOTIATIONS

The Lead State may elect to enter into negotiations pursuant to Public Contract Code (PCC) section 6611, if conditions exist. Should the Lead State elect to negotiate, the process shall be described in writing and provided to the parties involved prior to commencement of negotiations.

Attachment 4
SAMPLE MASTER AGREEMENT

This attachment contains the Sample Master Agreement, which sets forth requirements, terms, and conditions that will govern any Master Agreement resulting from this Request for Proposal (RFP).

Provisions in the final agreement that will be modified by the Lead State to reflect successful Offeror's final award are noted in brackets "{ }".

Important note: By submitting a proposal for this RFP, Offeror agrees to all requirements, terms, and conditions outlined in the Sample Master Agreement without exception. Offerors may not alter information in this Attachment.

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

(Rest of page intentionally left blank)

MASTER AGREEMENT NUMBER {#####}
for
AUTOMOTIVE PARTS
between
the State of California
and
{Contractor Name}

This Master Agreement is entered into by the State of California ("Lead State") and the following contractor (each a "Party" and collectively the "Parties") as a result of Solicitation Number 0000037049 (the "RFP") for the purpose of providing Automotive Parts through the NASPO ValuePoint cooperative purchasing program:

{Contractor} ("Contractor")
{Contractor street address}
{Contractor city, state, and zip code}

1. MASTER AGREEMENT CONTACTS

Contractor's contact (Contractor Contract Manager) for this Master Agreement is:

{Contact name}
{Contact title}
{Contact email address}
{Contact phone number}

Lead State's contact (Lead State Contract Administrator) for this Master Agreement is:

{Contact name}
{Contact title}
{Contact email address}
{Contact phone number}

Changes to the Master Agreement Contacts may be made without amendment to this Master Agreement in accordance with Exhibit B, Scope of Work, Section 2.C.

2. TERM

This Master Agreement is effective as of the date of the last signature below or October 20, 2026, whichever is later ("Effective Date"), and will terminate on October 19, 2031, unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to two (2) years following the initial term may be exercised upon mutual agreement by the Parties in accordance with Exhibit A, NASPO ValuePoint Master Agreement Terms and Conditions, Section II.

3. ATTACHMENTS

This Master Agreement includes the following:

- Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions
- Exhibit B: Scope of Work
- Exhibit C: Category Discounts
- Exhibit D: Lead State Terms and Conditions
- Exhibit E: Contractor's Proposal
- The RFP, incorporated by reference, which can be viewed at the Cal eProcure website (https://www.caleprocure.ca.gov/event/7760/0000037049)

4. SIGNATURE

The undersigned for each Party represents and warrants that this Master Agreement is a valid and legal agreement binding on the Party and enforceable in accordance with the Master Agreement's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Master Agreement and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Master Agreement.

LEAD STATE:	**CONTRACTOR:**
Department of General Services	{Contractor Name}
Agency Name	*Contractor Name*
707 Third Street West Sacramento, CA 95605	{Contractor Address}
Address	*Address*
Printed Name/Title of Person Signing	*Printed Name/Title of Person Signing*
Authorized Signature	*Authorized Signature*
Date	*Date*

EXHIBIT A:
NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

I. 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** means any purchase order, sales order, contract, scope of work, 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.). The Master Agreement will serve as the Participating Addendum for the Lead State and California Purchasing Entities.

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 an Order against the Master Agreement and becomes financially committed to the purchase.

1.13.1 Purchasing Entities within the Lead State include California state agencies and local governments (“California Purchasing Entities”). California local governments are defined as “any city, county, city and county, district or other local governmental body or corporation empowered to expend public funds for the acquisition of goods, information technology, or services”, reference Public Contract Code (PCC) Section 10298(a) and (b), and PCC Section 10299(b).

1.14 **Solicitation** means the solicitation resulting in this Master Agreement.

II. Term of Master Agreement

2.1 **Initial Term.** The initial term of this Master Agreement is for five (5) years from the Master Agreement Effective Date. The term of this Master Agreement may be amended beyond the initial term for two (2) additional years at the Lead State’s discretion and by mutual agreement and upon review of the 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.

III. 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;

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 An Order issued against the applicable Participating Addendum;

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. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.

IV. 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 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 Order.

4.3 **Scope of Work Updates.** At the discretion of the Lead State, and subject to agreement by the parties, the scope of this Master Agreement may be amended to include or accommodate new or updated models, versions, or technologies related to the objectives and deliverables set forth in the Solicitation.

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 to support documentation of participation and posting in appropriate databases.

4.6 Participating Entities.

4.6.1 If not proscribed by law or by the Chief Procurement Official of the state in which the entity is located, an entity may be eligible to execute a Participating Addendum directly with Contractor. Such entities may include:

4.6.1.1 Political subdivisions, public agencies, and service districts;

4.6.1.2 Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;

4.6.1.3 Federally recognized tribes;

4.6.1.4 Quasi-governmental entities; and

4.6.1.5 Eligible non-profit organizations.

4.6.2 Prior to execution of a Participating Addendum with an entity listed above, Contractor shall coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum. If Contractor becomes aware that an entity's use of a Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

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.

V. 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 two-fifths of one percent (0.4% or 0.004) 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) invoiced during the preceding quarter. The NASPO ValuePoint Administrative Fee is not negotiable and shall be included as part of all pricing incorporated now and hereafter into this Master Agreement.

5.2.2 Compliance Incentive. For each quarter that Contractor is fully compliant with the requirements described in Sections 5.3.2 and 5.3.3, the NASPO ValuePoint Administrative Fee owed by Contractor under Section 5.2.1 shall be reduced to one-third of one percent (0.33% or 0.0033) of Contractor's invoiced sales for that quarter.

5.2.2.1 Determination of Compliance. NASPO shall have the sole discretion to determine whether Contractor's submissions are compliant with the reporting requirements of Sections 5.3.2 and 5.3.3. Within thirty (30) days of the applicable reporting deadline, NASPO shall notify Contractor of any submission deemed noncompliant. Absent such notice, NASPO shall apply a credit to the NASPO ValuePoint Administrative Fee as described in Section 5.2.2.2. If Contractor's good-faith submission is deemed noncompliant, Contractor may still qualify for the incentive if Contractor engages with NASPO to bring its submission within ten (10) business days of notification of non-compliance. NASPO reserves the right to modify any determination of compliance based on subsequently obtained information.

5.2.2.2 Application of Incentive. The incentive identified in 5.2.2 will be applied as a credit towards the NASPO ValuePoint Administrative Fee due to NASPO in the quarter immediately following the determination of compliance. Any incentive credit due to Contractor in excess of a payment due shall be applied towards the NASPO ValuePoint Administrative Fee due to NASPO in the following quarter. Any incentive credit due to Contractor after expiration of this Master Agreement, where Contractor holds no Master Agreement resulting from a re-solicitation of this Portfolio, shall be remitted by NASPO to Contractor as a one-time payment.

5.2.3 Interest on Late Payment. If the Contractor does not pay the NASPO ValuePoint Administrative Fee within sixty (60) days following the end of each calendar quarter as required by Section 5.2.1, then Contractor shall accrue interest on the unpaid amounts at the rate of 1% per month.

5.2.4 Administrative Fee Updates. NASPO ValuePoint reserves the right to update the NASPO ValuePoint Administrative Fee. If the NASPO ValuePoint Administrative Fee is updated, any renewals exercised shall be contingent upon Contractor's acceptance of the updated NASPO ValuePoint Administrative Fee.

5.2.5 Participating Entity Fees. A Participating Entity may also require payment of an additional administrative fee by Contractors to the Participating Entity based on sales to Purchasing Entities within the Participating Entity's jurisdiction. The rate or amount, payment method, payment schedule, and reporting requirements for such fees shall be incorporated into the Participating Entity's Participating Addendum. Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Addendum by an amount not to exceed the Participating Entity's fee. Any such adjustment shall be clearly identified in the Participating Addendum and will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the Participating Entity's jurisdiction.

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"). By placing an Order under this Master Agreement, a Purchasing Entity agrees to have their data (i) included in reports submitted by Contractor to NASPO ValuePoint and (ii) used by NASPO ValuePoint as set forth in this Master Agreement without limitation, unless otherwise requested in writing by the Purchasing Entity and agreed to in writing by NASPO. Timely and complete reporting of Sales Data by Contractor 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, completely and accurately 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, completely and accurately 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 and shall include all required fields. 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.

5.3.6 Obligation to Act in Good Faith. The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section V. Nothing in this Section 5.3.6 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

5.3.7 Corrections Required. If it is determined that Contractor's sales reporting is inaccurate for any reason, Contractor is required to correctly report its sales data within thirty (30) days of discovery of the reporting error. If the reporting error caused underpayment of the NASPO ValuePoint Administrative Fee identified in Section 5.2.1, then the Contractor shall incur interest on the unpaid amounts at the rate of 1% per month. Such interest shall accrue from sixty (60) days following the end of the calendar quarter in which the sale was made, the date the payment would have originally been due had correct reporting been received.

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 NASPO ValuePoint eMarketPlace

5.5.1 The NASPO ValuePoint cooperative provides an eMarketPlace for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from NASPO ValuePoint's cooperative Master Agreements. This eMarketPlace is provided by NASPO at no additional cost to the Contractor or public entities. Its purpose is to facilitate the connection of public entities with Contractors who meet the requisite needs for a good, service, or solution by that entity through a NASPO ValuePoint Master Agreement.

5.5.2 Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.

5.5.3 Regardless of how Contractor's presence is reflected in the eMarketPlace (*i.e.*, hosted catalog, punchout site, or eQuote), Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.

5.5.4 Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.

5.5.5 Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms and pricing of this Master Agreement.

5.5.6 Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.

5.5.7 Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.

5.5.8 Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.

5.5.9 NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.

5.5.10 In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (*e.g.*, entity-specific pricing, restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that Participating Entity accurately reflects and is compliant with these requirements.

5.5.11 Implementation Timeline: Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.

5.5.11.1 Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.

5.5.11.2 Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.

5.5.11.3 NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.

5.5.11.3.1 Hosted Catalog. By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.

5.5.11.3.2 Punchout Site. By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.

5.5.11.3.3 eQuoting. NASPO will work with Contractor to set up participation and use to provide eQuotes through the NASPO eMarketPlace. This requirement would be in addition to any requirement to provide a hosted catalog or punchout site.

5.5.12 Hosted catalogs and punchout sites will provide all of the eMarketPlace standard data elements/information including, but not limited to, the following:

5.5.12.1 The most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with this Master Agreement;

5.5.12.2 A Lead State contract identification number for this Master Agreement;

5.5.12.3 Detailed product line item descriptions;

5.5.12.4 Pictures illustrating products, services, or solutions where practicable; and

5.5.12.5 Any additional NASPO, Lead State, or Participating Addendum requirements.

5.6 **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 during the initial term of the Master Agreement. This subsection does not limit the discretionary right of the Lead State 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.

5.7 **Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

5.8 **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.

VI. 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 discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) 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. Purchasing Entities may pay by check, electronic funds transfer, or by a purchasing card. 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.

VII. Ordering

7.1 Order Numbers. Master Agreement 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 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.

7.5.3 Notwithstanding any other provision of this Master Agreement, any obligation of a Purchasing Entity to make payment on an Order placed under this Master Agreement is contingent upon the appropriation and availability of funds for such purposes. In the event that sufficient funds are not appropriated or otherwise made available by the Purchasing Entity's legislative or governing body, the Purchasing Entity shall terminate the Order with written notice to Contractor. The Purchasing Entity shall not be liable to Contractor for any penalty or damages as a result of such termination, and Contractor shall be entitled to payment only for those

Products and Services delivered and accepted prior to the effective date of termination.

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 accept 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 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 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 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.

VIII. Shipping and Delivery

8.1 Shipping Terms. Delivery and shipping terms are outlined in Exhibit B, Section 8.

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. 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 Order number.

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, to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, and NASPO ValuePoint, 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 <u>one</u> 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.

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 If Contractor uses a vehicle in the performance of this Master Agreement, Contractor shall maintain Commercial Automobile Liability insurance for such vehicle covering bodily injury, property damage liability, and contractual liability, with a limit of not less than $1 million per occurrence, combined single limit.

13.3.3 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 Order.

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 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), NASPO ValuePoint, 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.

14.1.2 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.

14.1.3 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 and NASPO ValuePoint to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **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.

14.2.1.1 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").

14.2.1.2 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.

14.2.1.3 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.

14.2.2 **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.

14.2.2.1 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.

14.2.2.2 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.

14.2.2.3 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.

14.2.2.4 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.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately 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.

14.2.4 **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.

14.2.5 **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.

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

14.3 **Assignment/Subcontracts**

14.3.1 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.

14.3.2 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.

14.4 **Changes in Contractor Representation.** The Contractor must, within five (5) 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.

14.5 **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 to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by the Lead State 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.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by one or more of the following events, if such event's occurrence or continuation is beyond the party's reasonable control and substantially inhibits the party's ability to deliver Product or other deliverables in accordance with this Master Agreement: fire, riot, unusually severe weather, other acts of God, acts of war or terrorism, and restrictions on the movement of people or goods imposed in a public health order or by a declared state of emergency. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements;

14.8.1.2 A material breach of any term or condition of this Master Agreement;

14.8.1.3 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;

14.8.1.4 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

14.8.1.5 Any default specified in another section of this Master Agreement.

14.8.2 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.

14.8.3 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:

14.8.3.1 Any remedy provided by law;

14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;

14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;

14.8.3.5 Suspension of Contractor's performance; and

14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 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.

14.9 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 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 Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or 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 Order.

14.10 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.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any 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.

14.11.2 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.

14.12 Governing Law and Venue

14.12.1 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.

14.12.2 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.

14.12.3 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.

14.13 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.

14.14 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof or completion of performance thereunder, whichever is later.

EXHIBIT B:
SCOPE OF WORK

{Attachment 2 – Scope of Work will be incorporated as Exhibit B to a successful Offeror's final Master Agreement.}

EXHIBIT C:
CATEGORY DISCOUNTS

Contractor will provide Automotive Parts in the following categories at or above the minimum discount-off manufacturer suggested retail price (MSRP) listed in the table below.

Category	Description	Minimum Percent Discount-Off MSRP
1	Air Conditioning	{%}
2	Alternators and Starters	{%}
3	Batteries	{%}
4	Bearings (Ball and Roller)	{%}
5	Belts and Hoses	{%}
6	Brakes	{%}
7	Electrical and Ignition	{%}
8	Emission, Sensors and Exhaust	{%}
9	Engine and Drive Train	{%}
10	Filters (Oil, Gas, Air and Transmission)	{%}
11	Gaskets and Seals	{%}
12	Heating and Cooling (Engine)	{%}
13	Lamps, Lighting, and Mirrors	{%}
14	Oils, Chemicals, Fluids, and Lubricants	{%}
15	Pumps (Fuel and Water)	{%}
16	Suspension (Shocks and Struts) and Steering	{%}
17	Wipers	{%}
18	Winter Accessories	{%}
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	{%}
20	Automotive Repair Shop Supplies and Equipment/ Tools (e.g., windshield repair kits, wrenches, etc.)	{%}

EXHIBIT D:
LEAD STATE TERMS AND CONDITIONS

The Lead State's Non-Information Technology – General Provisions – Goods, DGS PD 401-NITGP (Goods) revised and effective 2/20/2025 is hereby incorporated by reference and made a part of the Master Agreement as if attached hereto.

These terms are applicable for California Purchasing Entities only and, in case of conflicts, will take precedence for orders placed by California Purchasing Entities under this Master Agreement.

EXHIBIT E:
CONTRACTOR'S PROPOSAL

{Offeror's proposal response will be added as an Exhibit to the Master Agreement}.

Attachment 5
PARTICIPATION INFORMATION

This attachment outlines the NASPO ValuePoint process, historical usage, and interested states.

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

THE NASPO VALUEPOINT PROCESS

The NASPO ValuePoint Lead State Model™ is a collaborative procurement process representing the input and interests of public entities across the nation.

The Lead State Model™

- Members & Stakeholders Identify Shared Cooperative Contracting Needs
- NASPO ValuePoint Engages Lead State & Multistate Sourcing Team
- Members & Stakeholders Provide Input on RFP Specifications & Objectives
- Lead State Issues RFP in Compliance with Lead State Laws
- Lead State & Multistate Sourcing Team Evaluate Supplier Proposals
- Lead State Negotiates & Executes Master Agreements
- Participating States & Entities Execute Participating Addenda
- Purchasing Entities Buy Directly from NASPO ValuePoint Contractors

NASPO ValuePoint does not charge fees to Participating Entities or Purchasing Entities—including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories—to use NASPO ValuePoint Master Agreements. Suppliers pay only a nominal administrative fee based on their total sales. By leveraging the collective volume of potential purchases nationwide, NASPO ValuePoint is able to offer customers the best value in cooperative contracting while giving suppliers the opportunity to reach multiple markets through a single solicitation.

HISTORICAL USAGE

The following table identifies total sales reported by Automotive Parts contractors through NASPO ValuePoint Master Agreements over the past five (5) calendar years:

Year	Reported Historical Sales Volume
2021[1]	$26,865
2022	$51,043,553
2023	$55,791,925
2024	$57,665,634
2025[2]	$45,670,171

No minimum or maximum level of sales volume is guaranteed or implied.

INTERESTED STATES

The states below have requested to be named in this RFP as potential participants in the resulting Master Agreement(s). This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.

Interested States	Reported Estimated Annual Volume	Sample Participating Addendum Terms and Conditions
Alaska	$2,000,000	N/A
California	$3,015,190	RFP Attachment 4[3]
Florida	$117,069	N/A
Hawaii	$1,884,886	Appendix A1 – A3
Missouri	$2,394,263	N/A
Nevada	$1,000,000	N/A
New Mexico	Unknown	Appendix B
South Dakota	$750,000	N/A
Texas	$867,450	N/A
Utah	$10,000,000	Appendix C
Vermont	$250,000	Appendix D
Virginia	***$4,500,000***	***N/A***
Washington	$6,000,000	N/A

Total Estimated Annual Volume From Interested States: ***$32,778,858* [~~$28,278,858~~]**

[1] Sales data is for Q4 of 2021
[2] Sales data is for Q1, Q2, and Q3 of 2025
[3] The Master Agreement(s) resulting from this RFP will serve as the Participating Addenda for the Lead State. Refer to Attachment 4, Section 1.9.

The Reported Estimated Annual Volume above aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. **No minimum or maximum level of sales volume is guaranteed or implied.**

Some Interested States have also provided state-specific terms and conditions, included in this attachment, that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. These terms and conditions are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

NASPO ValuePoint
PARTICIPATING ADDENDUM

INSERT PORTFOLIO TITLE HERE
Led by the State of **insert State**

Master Agreement #: **enter number** *(hereinafter "Master Agreement")*

Contractor: **NAME** *(hereinafter "Contractor")*

Participating State: **STATE OF HAWAII** *(hereinafter "Participating State")*

State of Hawaii, State Procurement Office (SPO) Price/Vendor List Contract No. insert VL/PL No.

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number insert contract number with insert Contractor name.

1. Scope: This addendum covers the [contract title] led by the State of [xxxxxx] for use by state agencies and other entities located in the Participating State of Hawaii authorized by that State's statutes to utilize State contracts.

2. Participation: All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Name
Address:	Address
Telephone:	Phone
Fax:	Fax
Email:	email

Participating State

Name:	Name of purchasing specialist
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 98613
Telephone:	phone number
Fax:	(808) 586-0570
Email:	specialist e-mail address

4. Participating State Modifications or Additions to the Master Agreement: These modifications or additions apply only to actions and relationships within the Participating State and its Entities.

[x] The following changes are modifying or supplementing the Master Agreement terms and conditions.

Specialists: The changes below starting from A. are the SPO standard PA clauses. If you have specific changes to the Master Agreement, please note as applicable in a different color. And if you change any of the SPO standard PA clauses, please note them in another color when routing to the Supervisor. [delete this paragraph.]

Changes:

A. eProcurement System and Marketplace

The State of Hawaii, State Procurement Office, has instituted a statewide eProcurement system, Aloha eBuys. Periscope Holdings, Inc. ("Periscope"), the State's eProcurement system provider, has implemented Aloha eBuys, which will allow Participating Entities to easily search and purchase from this price/vendor list contract. Therefore, Contractor acknowledges and agrees to the following, which requirements are separate from and additive to any of Contractor's requirements under the NASPO ValuePoint Master Agreement.

i. Remittance of the VCAF – On a quarterly basis, and at the same time as the submission of the Quarterly Sales Report per the above, the Contractor shall remit the VCAF via Automated Clearing House (ACH) transaction directly to Periscope using the Reconciler portal, or as otherwise reasonably directed by Periscope or the State, no later than thirty (30) days after the end of each calendar quarter. The calendar quarters will end September 30, December 31, March 31, and June 30 of each year. Periscope's or the State's receipt or acceptance of any Quarterly Sales Report and/or VCAF furnished pursuant to the Contract shall not preclude Periscope or the State from challenging the validity thereof at any time. Failure to remit the Quarterly Sales Report and/or VCAF timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the Aloha eBuys marketplace. Continued non-compliance by the Contractor may result in the Contractor being found in default of the Contract and, thus, may be subject to termination. Assistance with VCAF remittance is available from the Periscope Customer Service by email or telephone, which contact information shall be providing during Contractor's onboarding.

ii. Catalog Implementation – Contractor shall cooperate with State and/or Periscope as requested, including attendance of meetings, to include and maintain throughout the term an Aloha eBuys marketplace catalog of products and services consistent with and limited to the Contract items. Contractor may choose one of the following catalog options.

a. Hosted Catalog – Contractor shall provide a list of its awarded products and services (including product name, descriptions, images, relevant specifications, keyword search terms, etc.) and pricing consistent with the Contract and in the electronic format provided by Periscope. The product and service list may only provide the awarded products and services at prices listed in the Contract, including quantity and other discounts. In order to maintain the most up-to-date version of the product and service list in compliance with Contract terms, Contractor must provide updated product and service pricing information via electronic format approved by Periscope at least annually but no more than four times per year or as otherwise permitted by the Contract.

b. Punchout Catalog – Contractor shall "punch out" to its own online catalog, provided that its own online catalog is capable of being integrated with the Aloha eBuys marketplace via Commerce eXtensible Markup Language. Contractor's punchout catalog may only provide the awarded products and services at prices listed in the Contract, including quantity and other discounts. Contractor must validate its punchout catalog is current by providing a written update to Periscope every four (4) months (or as otherwise provided in the Contract), verifying that Contractor has audited the offered products and services and pricing.

c. Marketplace Presence – If the Contractor does not have a product listing to create a hosted or punchout catalog, they shall establish a marketplace presence that includes detailed Contractor information contact details, marketing materials, website URLs showcasing their awarded products and services, and any additional resources to assist buyers in making purchases. Any pricing displayed must be consistent with the prices listed in the contract, ensuring transparency and alignment for potential buyers.

Any price stated by Contractor under the Contract (including in its hosted or punchout catalog) shall be inclusive of the VCAF, and Contractor shall not reflect the VCAF as a separate line item on customer quotes and invoices.

Contractor shall 1) attend a vendor onboarding meeting with Periscope within thirty (30) days of the date of execution of this Amendment, and 2) complete upload of the hosted catalog or integration of the punchout catalog as well as the approval process(es) within ninety (90) calendar days of the date of execution of this Amendment. Contractor shall cooperate with State and Periscope for any other reasonable requests to ensure a catalog's accurate depiction of the Contract.

Any changes to Contractor's catalog permitted by the Contract must be pre-approved in writing by the State.

iii. Vendor and Contract Performance Reviews – The State and/or Periscope may reasonably request Contractor to participate virtually in an annual business review, for which review Contractor shall provide Contract sales information as well as marketing action plans, target strategies and staff training plans and requirements designed to grow utilization of the Contract. Periscope shall also provide and discuss Quarterly Sales Reporting and VCAF remittance compliance data.

iv. Retention and Inspection of Records and Audit – The Contractor shall keep records of all Sales in sufficient detail to enable the State or Periscope to determine the VCAF payable by the Contractor. The State and/or Periscope may examine and audit, at its own expense, Contractor's Sales records and Sales Reports for completeness and accuracy. If such examination reveals underpayment of the VCAF, the Contractor shall immediately pay to Periscope the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor shall reimburse the State and Periscope for the cost of the audit.

B. Quarterly Sales Reporting

The Contractor shall be required to submit a quarterly report documenting all Sales made under the Contract ("Quarterly Sales Report"). ''Sales'' shall mean total invoices for gross purchases, less any credits, taxes, regulatory fees, and separately stated shipping charges not included in unit prices, procured on or utilizing pricing and/or other terms of this Contract, regardless of the purchase process. The Quarterly Sales

Report shall be submitted directly to Periscope using the Reconciler portal (Periscope's reporting tool to which a link shall be provided to Contractor), or otherwise as reasonably directed by Periscope or State. Quarterly Sales Report will include any periods less than a full calendar quarter if Amendment and/or Contract does not start at the first day of a quarter or end on the last day of the quarter.

Contractor shall submit one Quarterly Sales Report for each contract for each reporting period in accordance with the following schedule:

	Date Range	Due No Later Than
Fiscal Year, Quarter 1	July 1 – September 30	October 31
Fiscal Year, Quarter 2	October 1 – December 31	January 31
Fiscal Year, Quarter 3	January 1 – March 31	April 30
Fiscal Year, Quarter 4	April 1 – June 30	July 31

The Quarterly Sales Report must contain the following information:

i. Complete and accurate details of all Sales, credits, returns, refunds, and the like for the reporting quarter;
ii. Purchasing Participating Entity and type;
iii. Product/service description, unit price, quantity and total sale amount;
iv. Invoice number and date;
v. Total Vendor Collected Administrative Fee amount due for the reporting quarter. "Vendor Collected Administrative Fee (VCAF)'' shall mean that for all Sales made under or utilizing the pricing or other terms of the Contract that have been invoiced, the Contractor shall remit a VCAF in the amount of one and one-half percent (1.5%) of all Sales to Periscope on behalf of the State;
vi. Such other information as the State and Periscope may reasonably request; and
vii. If no Sales were made during the reporting quarter, then a Quarterly Sales Report shall still be submitted showing zero Sales and zero VCAF due.

Initiation and submission of the Quarterly Sales Report are the responsibility of the Contractor without prompting or notification by Periscope or the State, and Periscope and the State assume no responsibility for any Contractor's failure to meet its sales reporting and fee remittance obligations. The State reserves the right to contact Contractor at any time to request that Contractor attest to the amounts reported to have been paid to them by Participating Entities.

The State and Periscope shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided.

C. Validity of this Addendum

Any of its terms or provisions, as well as the rights and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. The attached Exhibit A, Attorney General's General Conditions, is made part of this Addendum. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.

D. Inspection of Facilities

Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.

E. Campaign Contributions

The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.

F. Non-Mandatory

Purchases by State of Hawaii government entities under this Master Agreement are not mandatory. This addendum is non-exclusive and any conflict among documents shall follow the Order of Precedence described in the Master Agreement. (Use as applicable) If there is no Order of Precedence in the Master Agreement, it shall be as follows:

i. Hawaii Participating Addendum ("PA").
ii. Master Agreement, including all attachments thereto;
iii. A Purchase Order, Service Level Agreement, and/or Lease Agreement issued against the Master Agreement;
iv. The solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
v. Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

G. pCard

The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, School Facilities Authority, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than $2,500. For purchases of $2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

H. Compliance

Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.

i. Chapter 237, General Excise Tax Law;
ii. Chapter 383, Hawaii Employment Security Law;
iii. Chapter 386, Workers' Compensation;
iv. Chapter 392, Temporary Disability Insurance;
v. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance via HCE throughout the term of the Addendum.

Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date they are received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

<u>HRS Chapter 237 tax clearance requirement</u>. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). Tax clearance certificates issued after September 3, 2019, will have a scannable QR code that can be validated. This enables tax clearance certificates to be processed electronically and printed by the taxpayer. The QR code can be scanned using a web enabled device, such as a smart phone, to confirm authenticity and validity. A tax clearance certificate may be revoked by the Department when the taxpayer falls out of tax compliance.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: http://tax.hawaii.gov/forms/.

<u>HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements</u>. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: http://labor.hawaii.gov/forms/.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Contractor must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at http://cca.hawaii.gov/breg/.

I. Effective Date and Contract Period

This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

J. Licensing

Contractors must be properly licensed and capable of performing the Work as described in the Master Agreement, in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain all required licenses through the duration of the contract and Participating Addendum.

K. Insurance

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and its Subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by the Contractor or by Subcontractor or anyone directly or indirectly employed by either of them. If any Subcontractor is involved, the insurance policy or policies shall name the Subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a Subcontractor and naming the Subcontractor as additional insured, the Contractor may require the Subcontractor to provide its own insurance, which meets the requirements herein. It is understood that a Subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its Subcontractor(s) where appropriate.

Coverage	**Limits**
Commercial General Liability (occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 per accident
Professional Liability	\$1,000,000 per claim \$2,000,000 aggregate

Professional Liability shall be required from Contractors providing professional services requiring a license to conduct its business such as an engineer, architect, accountant, lawyer, information technology services etc. Use as applicable.

Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorize access/use of information, and identity theft) within limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate. – use as applicable

Each insurance policy required by this contract (with the exception of the Professional Liability policy-use as applicable), including a Subcontractor's policy, shall contain the following clauses:

i. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

ii. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

The Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this Addendum have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the price/vendor list and price/vendor list extensions, if any, including those of its Subcontractor(s), where appropriate. Upon request, Contractor shall provide a copy of the policy or policies or shall allow the State to inspect a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the State to exercise any or all the remedies provided in the contract and this RFP for a default by the Contractor.

The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this RFP. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this price/vendor list.

L. (Optional) Special Provisions for Purchases During Declared Disasters

The attached Exhibit B, Required FEMA Disaster Provisions are made part of this addendum. FEMA requires inclusion of certain provisions for the State to receive reimbursement.

5. Lease Agreements: Leasing is not authorized by this Addendum. Adjust as applicable.

6. Subcontractors: All contractors, dealers, and resellers authorized in the State of Hawaii, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Subcontractors are (or are not) allowed under this Addendum.

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

8. Freight Charges (unless otherwise stated in the master contract): Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally

shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions: All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price/Vendor List Contract No. add number and the NASPO ValuePoint Master Agreement Number add number.

   Purchase Orders and Payments shall be made to add Contractor name or its authorized subcontractors, if any.

10. Invoices and Payment Instructions: Contractor(s) shall forward original invoice(s), directly to the ordering agency. The GET or use tax and county surcharge may be added to the invoice as a separate line item and shall not exceed the current max pass-on tax rate(s) for each island.

    County surcharges on state general excise (GE) tax or Use tax may be visibly passed on but is not required. For more information on county surcharges and the max pass-on tax rate, please visit the Department of Taxation's website at http://tax.hawaii.gov/geninfo/countysurcharge.

    Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.

11. Participating Entity as Individual Customer: Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

12. Entire Contract: This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties, and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations, or agreements whether, oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: STATE OF HAWAII	Contractor: NAME
Signature:	Signature:
Name: BONNIE KAHAKUI	Name:
Title: Administrator, SPO	Title:
Date:	Date:

APPROVED AS TO FORM:

____
Deputy Attorney General

NASPO ValuePoint
PARTICIPATING ADDENDUM

INSERT PORTFOLIO TITLE HERE
Led by the State of **insert State**

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Name
Telephone:	Phone
Email:	email

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]

GENERAL CONDITIONS

Table of Contents

Page(s)

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

   a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

   b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

   c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

   d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

   e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

   f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

(1) The Assignee assumes all of the CONTRACTOR'S obligations;

(2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and

(3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

(1) Cancel the stop performance order; or

(2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

(1) Any completed goods or work product; and

(2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

(4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the Contract or subsequently agreed upon;

(3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;

(4) In such other manner as the parties may mutually agree; or

(5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:

(1) Description of performance (Attachment 1);

(2) Time of performance (i.e., hours of the day, days of the week, etc.);

(3) Place of performance of services;

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data, and

b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over $100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

(1) Social security number;

(2) Driver's license number or Hawaii identification card number; or

(3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

(1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

(5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.

(6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

(1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

(1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

SPECIAL PROVISIONS

(REQUIRED FEMA DISASTER PROVISIONS)

1. Administrative, Contractual, or Legal Remedies

For all contracts greater or equal to $150,000, which is the current Simplified Acquisition Threshold set by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council pursuant to 41 U.S.C. § 1908, Contractor agrees to be bound by the administrative, contractual, or legal remedies set forth in the State of Hawaii, General Conditions (AG-008), which govern contractors' violation or breach of contract terms and appropriate sanctions and penalties.

2. Termination for Cause and for Convenience

For all contracts in excess of $10,000, Contractor agrees to be bound by the termination for cause and for convenience provisions set forth in the State of Hawaii, General Conditions (AG-008).

3. Equal Employment Opportunity

If this contract is for construction, Contractor agrees, pursuant to the requirements provided in 2 C.F.R. Part 200, Appendix II, and 41 C.F.R. § 60-1.4(b), as follows:

(A) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(D) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 [Part I - Nondiscrimination in Government Employment; Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors; Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts], and the rules, regulations, and relevant orders of the Secretary of Labor.

(F) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(H) Contractor also agrees to include the following language in every subcontract or purchase order (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965), followed by the provisions of subparagraphs (A) through (G) in this paragraph 3, so that such provisions will be binding upon each subcontractor or vendor.

> Contractor shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:
>
> [followed by Subsections (A) through (G)]

Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Davis-Bacon Act

If the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, is applicable to this contract, Contractor agrees to comply with all provisions of the Davis-Bacon Act and shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Contractor also agrees to pay wages not less than once a week. Contractor accepts the current prevailing wage determination issued by the federal Department of Labor. Contractor also agrees to comply with the Copeland "Anti Kickback" Act, 40 U.S.C. § 3145 and Department of Labor regulations, 29 C.F.R. Part 3, and shall not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The State shall report all suspected or reported violations of the Copeland Anti Kickback Act to FEMA.

To the extent applicable, Contractor's subcontracts shall also require subcontractor to comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, the Copeland Anti Kickback Act, 40 U.S.C. § 3145, and 29 C.F.R. Part 3, and Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

5. Contract Work Hours and Safety Standards Act

If this contract is in excess of $100,000 and involves the employment of mechanics or laborers, Contractor agrees to comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701-3708, and the accompanying Department of Labor regulations, 29 C.F.R. Part 5. Contractor, pursuant to 40 U.S.C. § 3702, shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the Contractor shall compensate the worker at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. If this contract includes construction work, Contractor shall not require any laborer or mechanic performing work under this contract to perform such work in surroundings or under working conditions which are unsanitary, hazardous or dangerous, provided however, that such requirements shall not apply for purchases of supplies or materials or of articles ordinarily available on the open market, or for contracts for transportation.

6. Clean Air Act and Federal Water Pollution Control Act

Contractor agrees to comply with paragraph 40 (Pollution Control) of the State of Hawaii, General Conditions (AG-008), and all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387, and will report violations to FEMA and the Regional office of the Environmental Protection Agency.

7. Energy Efficiency

To the extent applicable to this contract, Contractor agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State.

8. Excluded Parties List System

Contractor understands and agrees that if Contractor is listed on the government-wide Excluded Parties List System in the System for Award Management at www.SAM.gov as suspended or debarred, Contractor cannot be awarded this contract.

9. Byrd Anti-Lobbying Amendment

If this contract is for an award of $100,000 or more, Contractor shall file a written declaration with the State agency identified as the contracting agency for this project certifying that Contractor has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Included within the written declaration shall be the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor with respect to this contract. Contractor also agrees to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

10. Recovered and Recycled Materials

To the extent applicable to this contract, Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 requires Contractor to use only items, designated in guidelines of the Environmental Protection Agency at 40 C.F.R. part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

To the extent applicable, Contractor agrees to comply with applicable requirements of 2 C.F.R. § 200.216.

12. Domestic Preferences for Procurements

To the extent applicable, Contractor agree to comply with applicable requirements of 2 C.F.R. 2 C.F.R. § 200.322.

APPENDIX B - NEW MEXICO TERMS & CONDITIONS

1. **Taxes:** The Contractor shall be reimbursed by the Participating State for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE: NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE PARTICIPATING STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

   Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Participating State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

2. **Retainage:**
   Reserved

3. **Performance Bond:**
   Reserved

4. **Term:** THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE NEW MEXICO STATE PURCHASING AGENT. This Agreement shall begin on the date approved by the New Mexico State Purchasing Agent and end on DATE. The Participating State reserves the right to renew the Participating Addendum on an annual basis by mutual Agreement not to exceed a total of 10 years in accordance with NMSA 1978 §13-1-150.

5. **Termination:**
   a) Grounds. The Participating State may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Participating State's uncured, material breach of this Agreement.

   b) Notice; Participating State Opportunity to Cure.
      (1) Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Participating State shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
      (2) Contractor shall give Participating State written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Participating State's material breaches of this Agreement upon which the termination is based and (ii) state what the Participating State must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Participating State does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Participating State does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
      (3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to provide the Goods or perform the Services contracted for, as determined by the Participating State; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the New Mexico State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

   c) Liability. Except as otherwise expressly allowed or provided under this Agreement, the Participating State's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either Party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PARTICIPATING STATE'S

OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

6. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Participating State to the Contractor. The Participating State's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. **Status of Contractor:** The Contractor and its agents and employees are independent contractors providing Goods and/or performing professional or general services for the Participating State and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. **Conflict of Interest; Governmental Conduct Act:**
   a) The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

   b) The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
   (1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Participating State employee while such employee was or is employed by the Participating State and participating directly or indirectly in the Participating State's contracting process;
   (2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the Participating State; (ii) the Contractor is not a member of the family of a public officer or employee of the Participating State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the Participating State, a member of the family of a public officer or employee of the Participating State, or a business in which a public officer or employee of the Participating State or the family of a public officer or employee of the Participating State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
   (3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Participating State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the Participating State whose official act, while in the Participating State's employment, directly resulted in the Participating State's making this Agreement;
   (4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or

small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

(5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

(6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Participating State.

c) Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Participating State relied when this Agreement was entered into by the Parties. Contractor shall provide immediate written notice to the Participating State if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Participating State and notwithstanding anything in the Agreement to the contrary, the Participating State may immediately terminate the Agreement.

d) All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. Amendment:

a) This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto and all other required signatories.

b) If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. Merger: This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

11. Penalties for violation of law: The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

12. Equal Opportunity Compliance: The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. Workers Compensation: The Contractor agrees to comply with the Participating State's laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Participating State.

14. **Applicable Law:** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

15. **Records and Financial Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Participating State, including the New Mexico Department of Finance and Administration and the New Mexico State Auditor. The Participating State shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Participating State to recover excessive or illegal payments.

16. **Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

17. **Enforcement of Agreement:** A Party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

18. **Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Participating State.

19. **Notices:** Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Participating State:

Name:	State Purchasing Director, State Purchasing Division
Address:	1100 St. Francis Dr., Room 2016, Santa Fe, NM 87505
Telephone:	(505) 827-0472
Email:	

To the Contractor:

Name:	
Address:	
Telephone:	
Contact:	
Email:	

20. **Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the Parties.

21. **Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. **Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Purchasing Entity and the State of New Mexico may procure the Goods or Services from another source and hold the Contractor

responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Purchasing Entity and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. Equitable Remedies: Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Participating State irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Participating State, and the Contractor consents to the Participating State's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Participating State's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the Participating State may have under applicable law, including, but not limited to, monetary damages.

24. New Mexico Employees Health Coverage:

a) If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Participating State exceed $250,000.

b) Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the Participating State.

c) Contractor agrees to advise all employees of the availability of Participating State's publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: https://bewellnm.com/.

25. Indemnification: The Contractor shall defend, indemnify and hold harmless the Purchasing Entity and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Participating State and the Risk Management Division of the New Mexico General Services Department by certified mail.

26. Default and Force Majeure: The Purchasing Entity reserves the right to cancel all or any part of any Orders placed under this Agreement without cost to the Purchasing Entity, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Participating State and/or the Purchasing Entity due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the Order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Participating State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Participating State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. Assignment: The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Participating State.

28. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Participating State. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Participating State.

29. **Inspection of Plant:** The Participating State may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. **Commercial Warranty:** The Contractor agrees that the Goods and/or Services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such Goods and/or Services, and that the rights and remedies provided herein shall extend to the Participating State and are in addition to and do not limit any rights afforded to the Participating State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **Condition of Proposed Items:** Where Goods are a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified in the Participating Addendum.

32. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Participating State, its officers and employees and Procuring Entity from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

33. **Confidentiality:** Any Confidential Information provided to the Contractor by the Participating State or, developed by the Contractor based on information provided by the Participating State in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Participating State. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Participating State within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Participating State will result in direct, special and incidental damages.

34. **Contractor Personnel:**
    a) Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Participating State. Key personnel are those individuals considered by the Participating State to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

    [Insert Contractor Staff Name(s)]

    b) Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Participating State. For all personnel, the Participating State reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Agreement is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to the Participating State's approval. The Participating State, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Agreement. The Contractor shall also make interim arrangements to assure that the Agreement progress is not affected by the loss of personnel. The Participating State reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Participating State, meeting the Participating State's expectations.

35. **Incorporation by Reference and Precedence:** In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of

precedence: (1) this Participating Addendum; (2) the Master Lease Agreement, if applicable; and (3) the NASPO ValuePoint Master Agreement.

36. **Inspection:** If this Agreement is for the purchase of Goods, final inspection and acceptance shall be made at Destination. Goods rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37. **Inspection of Services:** If this Agreement is for the purchase of services, the following terms shall apply.
   - **a)** Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
   - **b)** The Contractor shall provide and maintain an inspection system acceptable to the Participating State covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Participating State during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
   - **c)** The Participating State has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Participating State shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
   - **d)** If the Participating State performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
   - **e)** If any part of the services do not conform with the requirements of this Agreement, the Participating State may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Participating State may:
     - **(1)** require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
     - **(2)** reduce the Agreement price to reflect the reduced value of the services performed.
   - **f)** If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Participating State may:
     - **(1)** by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Participating State that is directly related to the performance of such service; or
     - **(2)** terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

38. **Insurance:** If the Services contemplated under this Agreement will be performed on or in Participating State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.
   - **a)** Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: $100,000.
   - **b)** Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
   - **(1)** Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.
   - **(2)** Property damage or combined single limit coverage: $1,000,000.
   - **(3)** Automobile liability (including non-owned automobile coverage): $1,000,000.
   - **(4)** Umbrella: $1,000,000.
   - **c)** Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance

and provide a waiver of subrogation.

39. **Arbitration:** Any controversy or claim arising between the Parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq*.

40. **Reporting**:
The Contractor agrees to provide a utilization report on all sales/or services and other revenues (including commissions charged) and fees to the agreement administrator in accordance with the following schedule:

Quarter:	**Period Ending:**	**Report Due Date:**
First	September 30	October 30
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

The sales report shall include the gross total sales and other revenues including commissions charged for the period subtotaled by Procuring Agency or local public body name. Even if the Contractor experiences zero sales during the quarter, a report shall still be submitted.

41. **Fees**:
The Contractor agrees to remit an administrative reporting fee payable by check to the State Purchasing Division for an amount equal to **one percent (1.00 %)** of the total sales and other revenues derived from the New Mexico state agencies and local public bodies. The Contractor shall indicate the contract number ######### and include the remittance check with the quarterly sales report.

Reports may be submitted via U.S. mail to NM State Purchasing Division or via email to:
GSD.QuarterlyUsageR@gsd.nm.gov

For payment of fees through U.S. Mail or Courier Delivery:
New Mexico State Purchasing Division
Joseph Montoya Building, Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

42. **Lease Agreements:**
Update if Lease are allowed under the MA and by NM, otherwise insert "Reserved."

43. **Subcontractors:** All Contactors, Authorized Dealers, and resellers authorized in the State of New Mexico, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in this Participating Addendum and the aforementioned Master Agreement.

APPENDIX C – UTAH TERMS & CONDITIONS

STATE OF UTAH COOPERATIVE STANDARD TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
   a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, and personal data as defined in Utah Code 63A-19-101. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
   b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
   c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
   d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
   e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
   f) "**Division**" means the Division of Purchasing and General Services.
   g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
   h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
   i) "**Goods**" means all types of tangible personal property, including but not limited to materials, supplies, Custom Deliverable, and equipment that Contractor is required to deliver to the State Entity under this Contract.
   j) **"Procurement Item"** means Goods, a supply, Services, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
   k) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
   l) "**Services**" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
   m) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
   n) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
   o) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
   p) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third-Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not

permitted to offset identified overcharges by alleged undercharges to Eligible Users.

5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
   a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
   b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
   c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

    On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

    If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

    Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY**. The Contractor shall maintain the following insurance coverage:
    a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
    b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars ($1,000,000.00) per person per occurrence and three million dollars ($3,000,000.00) aggregate.
    c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of the Procurement Item(s) under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be $1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
    d. Other insurance policies required in the Solicitation.

    Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

    The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED**.

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. Destination Freight Prepaid and Allowed, unless specifically

negotiated otherwise and explicitly written in this contract, with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.

    If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act, as amended. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third-party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.

27. **OWNERSHIP IN CUSTOM DELIVERABLES**: In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:

    1. Contractor has received payment for the Custom Deliverables,

    2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the Procurement Item(s) performed under this contract ("Background IP"), and

    3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the Procurement Item(s), or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Procurement Item(s) (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Procurement Item(s) or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

    4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.

29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.

31. **CONFIDENTIALITY:** If Contractor has access to or processes Confidential Information, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) comply with any requirements contained in the contract regarding permitted uses and disclosures of personal data, measures designed to safeguard personal data, and the destruction of personal data. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information, including any data breaches, in accordance with UCA 63A-19 Government Data Privacy Act. In Accordance with UCA 63A-19, Contractor must comply with all the same requirements regarding personal data as the State.

    Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

    Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.

34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

35. **REPORTS AND FEES:**
    a. Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of a check,EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.

    b. Quarterly Reports**:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: https://statecontracts.utah.gov/Vendor**.**.

c. Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

d. Fee Payment: After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

e. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

36. **ORDERING**: Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

37. **END USER AGREEMENTS**: If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment.. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.

38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division’s sole discretion whether to provide approval, which approval must be in writing.

39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES**: Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor’s job vacancies within the State of Utah.

41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor’s responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor’s responsibilities may be reinstated upon advance formal written notice from the Eligible User.

43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any Procurement Item(s), supplies, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such Procurement Item(s) supplies,, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

44. **CHANGES IN SCOPE**: Any changes in the scope of the Procurement Item(s) to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of the Procurement Item(s).

45. **ATTORNEY’S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney’s fees incurred in connection with such action.

46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of the Procurement Item(s) under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.

47. **PERFORMANCE EVALUATION**: The Division may conduct a performance evaluation of Contractor, including Contractor’s Subcontractors. Results of any evaluation may be made available to Contractor upon request.

48. **STANDARD OF CARE**: The Procurement Item(s) performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having regular experience providing similar Procurement Item(s) which similarities include the type, magnitude, and complexity of the Procurement Item(s) that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities,

additional burdens, penalties, damages, or third-party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Procurement Item(s) of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.

53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.

54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.

55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

56. **ANTI-BOYCOTT ACTIONS**: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

57. **TIME IS OF THE ESSENCE:** Procurement Item(s) shall be completed by any applicable deadline stated in this Contract. For all Procurement Item(s), time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Procurement Item(s) required under this Contract.

58. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.

59. **LOCAL WAREHOUSE AND DISTRIBUTION:** If required under the Solicitation, Contractor will maintain a reasonable amount of stock warehoused in the State of Utah for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice.

60. **Restricted Foreign Entities and Forced Labor:** In accordance with Utah law, Contractors contracting with the State certify that they are not providing a "forced labor product" as defined in Utah Code 63G-6a-121. If the Contractor is providing technology or technology services, networks, or systems, the Contractor certifies that the aforementioned does not come from a "restricted foreign entity," as also defined in UCA 63G-6a-121.

(Revision Date: 9/16/2024)

APPENDIX D – VERMONT TERMS & CONDITIONS

STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

REVISED OCTOBER 1, 2024

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee, or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party's invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State regarding its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights, or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights, or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity:

- **A.** The Party shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.
- **B.** After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.
- **C.** The Party shall indemnify the State and its officers and employees if the State, its officers, or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.
- **D.** Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the

Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: https://aoa.vermont.gov/Risk-Claims-COI.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports, and other proofs of work.

10. False Claims Act: Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority, or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Use and Protection of State Information:

A. As between the State and Party, "State Data" includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain State Data to which the Party may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("Confidential State Data").

B. With respect to State Data, Party shall:

- **i.** take reasonable precautions for its protection;
- **ii.** not rent, sell, publish, share, or otherwise appropriate it; and
- **iii.** upon termination of this Agreement for any reason, Party shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.

C. With respect to Confidential State Data, Party shall:

- **i.** strictly maintain its confidentiality;
- **ii.** not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
- **iii.** provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
- **iv.** implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
- **v.** promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential State Data so that the State may seek an appropriate protective order; and
- **vi.** upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.iii above in this section, return or destroy all Confidential State Data remaining in its possession or control.

D. If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Party shall utilize:

- **i.** industry-standard firewall protection;
- **ii.** multi-factor authentication controls;
- **iii.** encryption of electronic Confidential State Data while in transit and at rest;
- **iv.** measures to ensure that the State Data shall not be altered without the prior written consent of the State;

v. measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;

vi. training to implement the information security measures; and

vii. monitoring of the security of any portions of the Party's systems that are used in the provision of the services against intrusion.

E. No Confidential State Data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the United States, except with the express written permission of the State.

F. Party shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.

G. State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives

H. In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this Agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this Agreement. Records produced or acquired in a machine-readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of this Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable, and shall include this provision in all subcontracts for work performed in Vermont. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Offset: The State may offset any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.

16. Taxes Due to the State: Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract, or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of $250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), as amended by Section 17 of Act No. 142 (2010) and by Section 6 of Act No. 50 (2011).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Confidentiality and Protection of State Information"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel, and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Regulation of Hydrofluorocarbons: Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: https://bgs.vermont.gov/purchasing-contracting/debarment.

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Vermont Public Records Act: Party acknowledges and agrees that this Agreement, any and all information obtained by the State from the Party in connection with this Agreement, and any obligations of the State to maintain the confidentiality of information are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 *et seq.*

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lockouts) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not use the State's logo or otherwise refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. **Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to pay Party from State revenues.

B. **Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

C. **Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power, or remedy under this Agreement shall not impair any such right, power, or remedy, or be construed as a waiver of any such right, power, or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to, and use of, State facilities, which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. A Single Audit is required if the subrecipient expends $1,000,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission.

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of $1,000, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify; and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

Attachment 6
PROTEST INFORMATION

This attachment is intended to provide Offerors with an overview of the Lead State's protest law, procedures, and requirements, which may be updated and amended without notice. Offerors filing a protest are wholly responsible for locating, understanding, and complying with protest law, procedures, and requirements in effect at the time of the protest.

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

Award Protest

This solicitation/acquisition is being conducted under the provisions of the Alternative Protest Process (Public Contract Code Section 12125, et seq). By submitting a bid or proposal to this solicitation, the bidder consents to participation in the Alternative Protest Process and agrees that all protests of the proposed award shall be resolved by binding arbitration pursuant to the California Code of Regulations, Title 1, Division 2, Chapter 5.

A Notice of Intent to Award for this solicitation will be publicly posted in the Department of General Services Procurement Division website and sent via email to any bidder who submits a written request for notice and provided a valid email address.

During the protest period, any participating bidder may protest the proposed award on the following grounds:

1. For major information technology acquisitions – that there was a violation of the solicitation procedure(s) and that the protesting bidder's bid should have been selected; or
2. For any other acquisition, that the protesting bidder's bid or proposal should have been selected in accordance with the selection criteria in the solicitation document.

A written Notice of Intent to Protest the proposed award of this solicitation must be received (email/fax acceptable) by the Coordinator before the close of business 5 p.m. PST/PDT on the 2nd working day after issuing the notice of intent, as specified in the solicitation. Failure to submit a timely, written Notice of Intent to Protest waives the bidder's right to protest.

Bidder is to send the notice of protest to:

Alternative Protest Process Coordinator/Support Services Unit
Department of General Services
Procurement Division
Statewide Procurement Oversight, Consulting and Support Services Section
707 Third Street, 2nd Floor South
West Sacramento, CA 95605
Fax: 916 / 376-6226
Email: PDprotest@dgs.ca.gov

Within seven (7) working days after the last day to submit a Notice of Intent to Protest, the Coordinator must receive from the protesting bidder the complete protest filing including the signed, written detailed statement of protest, including exhibits, filing fee, and deposit or small business certification as applicable. Untimely submission of the complete protest filing waives the bidder's right to protest.

Protest bond requirement: bond amount for this Alternative Protest Process shall be 10 percent of the of the estimated contract value as specified in the solicitation. See California Code of Regulations, Title 1, Section 1418.

Attachment 7
OFFEROR PROPOSAL REQUIREMENTS

This attachment contains the technical and administrative bidding requirements pertaining to the Request for Proposal (RFP). Requirements are identified as mandatory (M), non-mandatory (NM), mandatory scored (MS), and non-mandatory scored (NMS). Refer to Attachment 1 – RFP Terms and Conditions, Section III.E, Identification of RFP Requirements for further definitions.

Offerors must submit required forms with the proposal as specified in RFP Overview, Section IV.B, Required Submissions.

DO NOT SUBMIT ATTACHMENT WITH OFFEROR PROPOSAL.

1. TECHNICAL REQUIREMENTS

1.1. Proposed Product Categories (M)

By submitting a proposal, Offeror agrees to provide Automotive Parts in all 20 categories defined in Attachment 2 – Scope of Work, Section 3, Scope of Products in accordance with Attachment 2 – Scope of Work and Attachment 4 – Sample Master Agreement.

1.2. Offeror Certifications (M) – REQUIRED WITH PROPOSAL

Offeror must submit completed **Attachment 8 – Offeror Information, Acknowledgements, and Certifications** with the proposal. Attachment 8 shall be signed by an individual who is authorized to contractually bind the firm submitting the proposal. An unsigned Attachment 8 will result in the proposal being rejected.

Failure to submit the signed **Attachment 8 – Offeror Information, Acknowledgements, and Certifications** with the proposal will result in the proposal being considered non-responsive.

1.3. Proposed Agreement (M)

By signing **Attachment 8 – Offeror Information, Acknowledgements, and Certifications** and submitting a proposal, the Offeror agrees to all terms and conditions in Attachment 2 – Scope of Work and Attachment 4 – Sample Master Agreement, without changes.

Offeror also agrees to comply with all applicable federal and California laws, regulations, and orders, including but not limited to:

- Non-Discrimination Toward WTO GPA Signatories
- Plastic Trash Bag Certification Violations (Public Resources Code Section 42290, et seq.)
- Air or Water Pollution Violations (Government Code Section 4477)
- Fair Employment and Housing Commission Regulations (Government Code Section 12990)
- Unfair Practices Act and Other Laws (Business and Professions Code Section 17000 et seq.)
- Tax delinquency (Public Contract Code Section 10295.4): Franchise Tax Board Top 500 Delinquent Taxpayers and California Department of Tax and Fee Administration Top 500 Sales & Use Tax Delinquencies in California

Any alteration of Attachment 2 – Scope of Work or Attachment 4 – Sample Master Agreement by an Offeror will result in the proposal being rejected.

1.4. Required Narratives (MS) – REQUIRED WITH PROPOSAL

Offeror must complete **Attachment 9 – Offeror Response Worksheet** and submit with the proposal. Offerors are to input narrative responses on the attachment only and only for the items requested. If necessary, Offerors may add supporting documents to further explain their response. Narrative responses will be evaluated in accordance with Attachment 3 – RFP Evaluation Plan.

Failure to submit the **Attachment 9 – Offeror Response Worksheet** with the proposal will result in the proposal being considered non-responsive.

1.5. Customer References (MS)

Offeror will be required to submit three (3) customer references meeting the requirements outlined in this section upon request from the Lead State. Customer references demonstrate to the Lead State that the Offeror can provide Automotive Parts and is capable of handling the California state government sector as well as other Participating Entities' government sectors.

Each customer reference shall:

a) Be for work performed, delivered, and accepted by a public entity (e.g., state, local agency, or political subdivision), within the last five (5) years.
b) Be for similar product (i.e., sale and distribution of automotive parts to multiple locations) to that requested in this RFP.
c) Be valued at or above $500,000.00. An accumulation of orders from a single customer entity meeting the applicable minimum value is acceptable.

References must be for the Offeror. Customers are defined as end-users of the product represented in the Customer Reference. References from a contractor for subcontractor work that was performed by the Offeror is not acceptable.

During the evaluation phase, the Lead State will provide Offerors with the Customer Reference Form. Customer references must be provided on this form only. References submitted in any other format will not be considered. Offeror shall submit completed Customer Reference Forms within 10 business days after notification from the Lead State.

Customer references will be required to provide a rating of one (1) to five (5) for the following questions:

1) How would you rate the Contractor's geographic coverage and ability to deliver on time throughout all your locations?
2) How would you rate the Contractor's product availability and fill rate?
3) How would you rate the Contractor's turnaround time when contacted to provide assistance?
4) How would you rate the experience of the Contractor in managing large accounts?
5) How would you rate the service provided by the Contractor's assigned Contract Administrator and/or Project Manager?
6) How would you rate the quality of the Contractor's value-added services (i.e., installation, assembly, design and CAD input services)?
7) How would you rate the performance of Contractor's products compared to that of its competitors?
8) How would you rate the Contractor's ordering system?
9) How would you rate the Contractor's ability to provide reports in an accurate and timely manner?
10) How would you rate your level of overall satisfaction with the Contractor?

The rating scale below will be used:

- Exceptional (5) - Best-in-class performance. Performance met all contract requirements and exceeded several to the customer's benefit. No issues were encountered.
- Very Good (4) - Performance met all contract requirements and exceeded some to the customer's benefit. There were a few minor issues, which were negligible.
- Satisfactory (3) - Performance met contract requirements. There were some minor issues, and corrective actions taken by the contractor were acceptable.
- Marginal (2) - Performance did not meet the contractual requirements. There were issues, some of a serious nature, for which corrective action was only somewhat effective.
- Unsatisfactory (1) - Performance did not meet contractual requirements. There were serious issues and the contractor's corrective actions were ineffective.

The Lead State may contact customer references to verify the information on the submitted forms.

Customer References will be scored as specified in Attachment 3 – RFP Evaluation Plan.

Failure to submit three (3) Customer References meeting the minimum requirements outlined in this section will result in the proposal being considered non-responsive.

2. ADMINISTRATIVE REQUIREMENTS

2.1. California Civil Rights Laws (M) – REQUIRED WITH PROPOSAL

Pursuant to Public Contract Code (PCC) Section 2010, any Offeror entering into or renewing a contract over $100,000 on or after January 1, 2017, must certify all of the following:

- That it is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code).
- That it is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).
- (a) That any policy that they have against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).
  (b) Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code.

Offerors are required to submit a completed California Civil Rights Laws Certification with the proposal. Failure to submit this form with the proposal will result in the proposal being considered non-responsive.

2.2. California Iran Contracting Act (M) – REQUIRED WITH PROPOSAL

Offeror must either a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (DGS) pursuant to PCC section 2203(b) and is not a financial institution extending $20 million or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of person engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement pursuant to PCC section 2203(c) or (d).

The DGS list of entities prohibited from contracting with public entities in California in accordance with the Iranian Contracting Act, 2010, can be found at DGS Iran Contracting Act Ineligibility List.

Offeror shall submit their response on **Attachment 9 – Offeror Response Worksheet**. Failure to submit a response will result in the proposal being considered non-responsive.

2.3. Darfur Contracting Act (M)

PCC sections 10475-10481 apply to any company that currently or within the previous three (3) years has had business activities or other operations outside of the United States. For such a company to bid on or submit a proposal for a State of California contract, the company must certify that it is either a) not a scrutinized company; or b) a scrutinized company that has been granted permission by the DGS to submit a proposal.

A scrutinized company is a company doing business in Sudan as defined in PCC Section 10476. Scrutinized companies are ineligible to, and cannot, propose on or submit a bid for a contract with a State agency for goods or services (PCC Section 10477(a)), unless written permission from the Director of DGS to propose on this procurement has been granted (PCC Section 10477(b)).

Offeror must indicate if it has had business activities or other operations outside of the United States in the last three (3) years on **Attachment 9 – Offeror Response Worksheet**. If a Proposer's response is "Yes", Offeror must submit a completed Darfur Contracting Act form. The completed form should be included with the proposal response. If the completed form is not submitted with the proposal response, Offeror shall submit within five (5) business days after request from the Lead State.

Failure to submit this form as required will result in the proposal being considered non-responsive.

If an Offeror has not conducted business outside of the United States in the last three (3) years, the form is not required.

2.4. Federal Debarment Certification (M)

Expenditures from the Master Agreements resulting from this RFP may involve Federal funds. The Federal Department of Labor requires all State agencies which are expending Federal funds to have in the contract file, a certification by the Contractor that they have not been debarred nor suspended from doing business with the Federal government.

Offerors must submit the Federal Debarment Certification form. The completed form should be included with the proposal. If the completed form is not submitted with the proposal, Offeror shall submit within five (5) business days after request from the Lead State. Failure to submit this form will result in the proposal being considered non-responsive.

2.5. Generative Artificial Intelligence (GenAI) (M)

1) For the purposes of this section, “State” refers to the State of California.

2) Disclosure Notification

The State of California seeks to realize the potential benefits of GenAI, through the development and deployment of GenAI, while balancing the risks of these technologies.

Bidder/Offeror must notify the State in writing if it: (1) intends to provide GenAI as a deliverable to the State; or (2), intends to utilize GenAI, including GenAI from third parties, to complete all or a portion of any deliverable that materially impacts: (i) functionality of a State system, (ii) risk to the State, or (iii) Contract performance. For avoidance of doubt, the term "materially impacts" shall have the meaning set forth in State Administrative Manual (SAM) 4986.2.

Failure to report GenAI to the state may result in disqualification. The State reserves its right to seek any and all relief it may be entitled to as a result of such non-disclosure.

Upon notification by a Offeror/Offeror of GenAI as required, the State reserves the right to incorporate GenAI Special Provisions into the final contract or reject bids/offers that present an unacceptable level of risk to the State.

Government Code 11549.64 defines “Generative Artificial Intelligence (GenAI)” as an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio that emulates the structure and characteristics of the system’s training data.

3) Offeror shall indicate on **Attachment 9 – Offeror Response Worksheet** if the Offeror intends to provide GenAI as a deliverable to the State or intends to complete all or a portion of any deliverable that has material impacts as specified above. If a response is not included in the proposal, Offeror shall provide it within five (5) business days after request from the Lead State. Failure to submit required information will result in the proposal being considered non-responsive.

2.6. California Executive Order N-6-22 – Russia Sanctions (M)

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under State law. By submitting a proposal, Offeror represents that it is not a target of Economic Sanctions. Should the Lead State determine Offeror is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Offeror's proposal any time prior to agreement execution, or, if determined after agreement execution, shall be grounds for termination by the Lead State.

2.7. California Seller's Permit (M)

This RFP is subject to all requirements set forth in Sections 6452, 6487, 7101 and 18510 of the Revenue and Taxation Code, and Section 10295 of the PCC, requiring suppliers to provide a copy of their retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates issued by the California Department of Tax and Fee Administration (CDTFA).

Offerors are required to provide their California Seller's Permit number on **Attachment 9 – Offeror Response Worksheet**. If not included in the proposal, Offeror shall submit it within five (5) business days after request from the Lead State.

A copy of the seller's permit shall be submitted within five (5) business days of request from the Lead State.

2.8. California Secretary of State Certification / Fictitious Business Name (M)

If Offeror is a Corporation, or Limited Liability Company (LLC), Offeror must provide their California Secretary of State (SOS) certification number on **Attachment 9 – Offeror Response Worksheet**. If the SOS certification number is not included in the proposal, Offeror shall provide it within five (5) business days after request from the Lead State.

SOS certification should be approved and in "Active" status at the time of RFP Close Date. If an Offeror's SOS certification is not in "Active" status on the RFP Close Date, the Offeror will have five (5) business days after notification from the Lead State to provide an "Active" SOS certification.

If Offeror is "doing business as" (dba), whereas the name under which they operate its business differs from its legal, registered name, the Offeror must provide a Fictitious Business Name (FBN) filing. The FBN filing should be included with the proposal. If the FBN filing is not submitted with the proposal, Offeror shall submit within five (5) business days after request from the Lead State. If Offeror's dba is listed on the SOS certification, no FBN is needed.

The Lead State reserves the right to request clarification.

2.9. Prohibition of Delinquent Taxpayers (M)

PCC Section 10295.4 prohibits the Lead State from entering into an agreement for goods or services with any taxpayer, whose name appears on either the 500 largest tax delinquencies list maintained by the CDTFA, or the Franchise Tax Board (FTB) pursuant to Revenue and Taxation Code Sections 7063 and 19195. Respectively, Section 10295.4 provides no exceptions to these prohibitions.

By submitting a proposal, the Offeror certifies that it is not included on either the FTB or CDTFA lists found at:

- FTB List
- CDTFA List

2.10. Payee Data Record (M)

By submitting a proposal, Offeror agrees to submit a completed Payee Data Record (STD 204) within five (5) business days after request from the Lead State.

2.11. Subcontractors (M) – REQUIRED WITH PROPOSAL

All Offerors must complete the Bidder Declaration Form (GSPD-05-105) and include it with the proposal response.

When completing the declaration, Offerors must identify all subcontractors they are entering into an agreement with to perform under the resultant Master Agreement. Offerors awarded a Master Agreement are contractually obligated to use the proposed subcontractors for the corresponding work identified unless the Lead State agrees to a substitution, and it is incorporated by amendment to the Master Agreement.

Awarded Offerors shall be the sole point of contact for all contractual matters with the Lead State regarding the Master Agreement during the term of the agreement.

Use of subcontractors will be addressed within each Participating Entity's Participating Addendum.

2.12. Notice of Subcontractors (M)

Upon award to a Contractor, notice shall be given by the Lead State to the subcontractors listed in the Bidder Declaration Form of their participation in the Master Agreement for State of California purchases. Notification to the subcontractor by the Contractor is encouraged immediately after award of an RFP.

2.13. California Socioeconomic Programs (NM)

This section contains information for the following socioeconomic requirements and/or optional Offeror preferences and incentives:

- Disabled Veteran Business Enterprise (DVBE) Program Requirements and DVBE Incentive
- Small Business (SB) Preference
- Small Business Nonprofit Veteran Services Agencies (SB/NVSA)
- Non-Small Business Subcontractor Preference
- Target Area Contract Preference Act (TACPA) Preference

Offerors are not required to request these preferences and the Lead State's denial of these preferences is not a basis for rejection of an Offeror's proposal.

All certified firms must perform a "commercially useful function" in the performance of the contract as defined in Government Code (GC) Section 14837(d)(4).

If claiming SB, SB/NVSA, and/or DVBE participation, the relevant Offeror and/or subcontractor must be certified by California as a SB, SB/NVSA, and/or DVBE. Completed certification applications and required support documents must be submitted to the California Department of General Services, Office of Small Business and DVBE Services (OSDS) no later than 5:00 p.m. PT on the RFP Close Date, and the OSDS must be able to approve the application as submitted. Questions regarding certification should be directed to the OSDS at (916) 375-4940.

Master Agreements awarded with the applied preference will be monitored throughout the life of the agreement for compliance with statutory, regulatory, and contractual requirements. The Lead State will take appropriate corrective action and apply sanctions as necessary to enforce the preference program.

2.13.1. California Disabled Veteran Business Enterprise (DVBE) Program Requirements and DVBE Incentive

The DVBE Program participation requirement and DVBE Incentive have been waived for this RFP, therefore, this RFP does not include a goal or incentive. However, DVBE firms are encouraged to participate.

2.13.2. California Small Business Preference

A five (5) percent bid preference is available to Offerors certified as a small business in accordance with Government Code (GC) Section 14835 et seq. If applicable, Offeror must claim the preference on **Attachment 9 – Offeror Response Worksheet**.

The Small Business regulations concerning the application and calculation of the small business preference, small business certification, responsibilities of small business, department certification, and appeals can be viewed in the California Code of Regulations (Title 2, Division 2, Chapter 3, Subchapter 8, Section 1896 et seq.).

2.13.3. California Small Business Nonprofit Veteran Services Agencies (SB/NVSA)

SB/NVSA prime Offerors meeting requirements specified in the Military and Veterans Code (MVC) Section 999.50 et seq. and obtaining a California certification as a small business are eligible for the five (5) percent small business preference. If applicable, Offeror must claim the preference on **Attachment 9 – Offeror Response Worksheet**.

2.13.4. California Non-Small Business Subcontractor Preference

A five (5) percent bid preference is available to a non-small business claiming 25 percent California Certified small business subcontractor participation. If applicable, Offeror must claim the preference on **Attachment 9 – Offeror Response Worksheet.**

2.13.5. California Target Area Contract Preference Act (TACPA) Preference

This RFP provides for the optional TACPA preference. Offerors are not required to apply for this preference. Denial of the TACPA preference request is not a basis for rejection of the bid. Offerors are encouraged to carefully review the TACPA forms, requirements, and submittal instructions.

Offerors desiring to claim the TACPA preference must complete the TACPA Preference Request Form (Std. 830) and include it with the proposal.

Additionally, the Manufacturer's Summary Form (DGS PD 525) and Offeror's Summary Form (DGS PD 526) should be submitted with the proposal. If these forms are not included in the proposal, Offeror shall provide it within five (5) business days after request from the Lead State to be considered for a preference. The Lead State may request additional or missing information to determine eligibility.

The Lead State as part of its evaluation process reserves the right to verify, validate, and clarify all information contained in the proposal. This may include, but is not limited to, information from Offerors, manufacturers, subcontractors, and any other sources available at the time of proposal evaluation. Offeror refusal to agree to and/or comply with these terms, or failure to provide additional supporting information at the Lead State's request may result in the denial of the preferences requested.

Master Agreements awarded with the applied preference will be monitored throughout the life of the agreement for compliance with statutory, regulatory, and contractual requirements. The Lead State will take appropriate corrective action and apply sanctions as necessary to enforce the preference program.

Any questions regarding the TACPA preference should be directed to TACPA@dgs.ca.gov.

2.13.6. California SB/DVBE Participation Commitment Requirement (M)

For the purpose of the resulting Master Agreements, commitment requirements apply to spend by California state and local agencies only.

Within six (6) months of Master Agreement award, the Contractor shall meet or exceed their SB and/or DVBE commitment level on a contract-to-date basis. The Lead State reserves the right to audit records (e.g., cancelled checks, work logs, etc.) to verify the SB/DVBE subcontractors are performing the work committed to and being paid accordingly.

The corresponding percent of bid price identified on the Bidder Declaration Form, represents the percentage of total agreement dollars to be paid to the subcontractor.

Example: Offeror commits to two (2) percent DVBE subcontractor participation on a Master Agreement for State of California purchases with a total spend of $1,000,000.00. Offeror shall pay subcontractor a minimum of $20,000.00 for work performed under the agreement.

2.14. Commercially Useful Function (CUF) (M)

Offerors and/or subcontractors who have a California certification for one (1) or more of the socio-economic programs (i.e., DVBE or small business), must perform a commercially useful function in the resulting contract. CUF is defined in the Military and Veterans Code Section 999(b)(5)(B) for DVBE and in the Government Code Section 14837(d)(4)(A) for small business as consisting of all of the following:

- responsibility for the execution of a distinct element of the work
- actually performing, managing, or supervising the work
- performing work that is normal for its business services and functions
- not further subcontracting work that is greater than that expected by normal industry standards
- responsible, with respect to any products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing (if applicable), and making payment

A Contractor, subcontractor, or supplier is not considered to perform a CUF if their role is limited to that of an extra participant through which funds are passed in order to obtain the appearance of participation.

At the Lead State's option, Offerors may be required to submit additional written clarifying information regarding CUF. Failure to submit the requested written information, as specified, may be grounds for rejection of the proposal.

2.15. Disabled Veteran Business Enterprise (DVBE) Declaration Form (M)

Offerors and/or subcontractors who have been certified by California as a Disabled Veteran Business Enterprise (DVBE) (or who are bidding rental equipment and have obtained the participation of subcontractors certified by California as a DVBE) must submit a completed Disabled Veteran Business Enterprise Declaration Form DGS PD 843. All disabled veteran owners and disabled veteran managers of the DVBE(s) must sign the form. The completed form should be included with the proposal. If the completed form is not submitted with the proposal, Offeror shall provide it within five (5) business days after request from the Lead State.

3. COST REQUIREMENTS (M)

3.1. Category Discounts / Pricing (M)

Attachment 10 – Cost Proposal contains the cost worksheets that the Offerors shall use to enter RFP cost information. Modifying the structure of the worksheets may disqualify the Offeror.

To be considered for award, Offeror must offer a minimum discount-off manufacturer suggested retail price for all 20 categories.

Only the category discounts submitted in the proposal response shall be included in the awarded Master Agreement. No other fees can be charged to Purchasing Entities unless otherwise noted within the Master Agreement.

3.2. Cost Proposal Completion (M)

Offeror must complete worksheets as follows:

- **Tab 1 (Instructions) –** Offerors do not enter any information in this tab.
- **Tab 2 (Category Discounts) –** Offeror must provide a discount percentage (%) for all 20 categories per the instructions in Attachment 10.

  For Categories 1-20, Offerors must enter the minimum discount percentage (%) off the Manufactured Suggested Retail Price (MSRP)/List Price being offered for that category in the column titled "Minimum Percent Discount (%)". All discount percentages must be whole numbers (e.g. 75%).

  The worksheet is formulated to automatically calculate the "Average Discount" over all categories which will be used for evaluation purposes in accordance with Attachment 3 – RFP Evaluation Plan.

3.3. Cost Submittal (M) – REQUIRED WITH PROPOSAL

Offerors are required to complete **Attachment 10 – Cost Proposal** and submit as part of proposal as a separate attachment in accordance with RFP Overview, Section IV, Offeror Response.

Attachment 8
OFFEROR INFORMATION, ACKNOWLEDGEMENTS, AND CERTIFICATIONS

This attachment contains the Offeror's proposal details and must include the Offeror's authorized representative's signature in accordance with Attachment 1, Section IV.N, Required Signatures.

Offeror must provide responses to each item below. **Insert your responses into this worksheet directly below each prompt where indicated.** No other modifications to this form are permitted.

SUBMIT COMPLETED ATTACHMENT WITH PROPOSAL.

(Rest of page intentionally left blank)

OFFEROR INFORMATION, ACKNOWLEDGEMENTS, AND CERTIFICATIONS

I. OFFEROR INFORMATION

A. Company's Full Legal Name:

ENTER COMPANY NAME HERE

B. Primary Business Address:

ENTER BUSINESS ADDRESS HERE

C. Federal Tax Identification Number:

ENTER FEIN HERE

D. Entity Type (check one of the below):

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Limited Liability Company
- ☐ Corporation

E. Artificial Intelligence Disclosure. Was artificial intelligence technology used in the development or completion of any portion of this proposal? (Check one of the below.)

- ☐ Yes
- ☐ No

II. PROPOSAL CONTACT

The Proposal Contact must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact.

A. Proposal Contact Name:

ENTER RESPONSE HERE

B. Proposal Contact Title:

ENTER RESPONSE HERE

C. Proposal Contact Email:

ENTER RESPONSE HERE

D. Proposal Contact Phone Number:

ENTER RESPONSE HERE

III. ACKNOWLEDGEMENTS AND CERTIFICATIONS

By signing below and submitting a response to this RFP, Offeror acknowledges and certifies the following:

A. Non-collusion.

1. This proposal has been developed independently by Offeror and has been submitted without collusion and without any agreement, understanding, or planned common course of action with any other Offeror or supplier of Deliverables in a manner designed to limit fair and open competition.
2. The contents of this proposal have not been communicated by Offeror or its employees or agents to any person not an employee or agent of Offeror and will not be communicated to any such persons prior to the RFP Close Date.

B. Data Disclosure to Foreign Governments and Prohibited Technology. (Check one of the below.)

☐ Offeror is not an entity subject to laws, rules, or policies potentially requiring disclosure of, or provision of access to, customer data to foreign governments or entities controlled by foreign governments, and Offeror's offerings do not contain, include, or utilize components or services supplied by any entity subject to the same. Offeror's offerings also do not contain, include, or utilize covered technology prohibited under Section 889 of the National Defense Authorization Act, as amended.

☐ Offeror cannot certify all statements above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

C. Conflicts of Interest. (Check one of the below.)

☐ Offeror represents that none of its officers or employees are officers or employees of the Lead State and that none of its officers or employees have a conflict of interest as defined by the laws, rules, or policies of the Lead State.

☐ Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

D. Business Certifications. (Check all that apply.)

☐ Offeror is a California certified Small Business (SB).

☐ Offeror is a California certified Disabled Veteran Business Enterprise (DVBE).

ENTER CALIFORNIA CERTIFICATION ID HERE, IF APPLICABLE

E. Required Insurance. Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the levels prescribed in Attachment 4 – Sample Master Agreement.

F. NASPO ValuePoint Administrative Fee. Offeror agrees to pay an administrative fee and submit summary and detailed sales reports to NASPO ValuePoint in accordance with Attachment 4 – Sample Master Agreement. All costs proposed by Offeror must be inclusive of the NASPO ValuePoint administrative fee.

G. Marketing Plan. If awarded a Master Agreement resulting from this RFP, within 30 calendar days of execution of the Master Agreement, Offeror will meet with NASPO ValuePoint marketing personnel to review and track progress on the marketing plan described by Offeror in Attachment 9 – Offeror Response Worksheet.

H. Cancellation and Transfer. Offeror understands and agrees that the Lead State may, as set forth in Attachment 1 – RFP Terms and Conditions, cancel this RFP or transfer this RFP to a new Lead State if the Lead State determines that such transfer is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.

I. Conditional Awards. Offeror understands that awards and execution of a Master Agreement are conditional as set forth in Attachment 1 – RFP Terms and Conditions, and Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.

J. Understanding of the RFP. Offeror has read the RFP in its entirety and understands and agrees to comply with all requirements set forth therein. Any conflicts in the materials composing the RFP and any issues relating to the content of the RFP, including instructions, requirements, or specifications Offeror believes to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful, have been brought to the attention of the Lead State using the process described in the RFP for asking questions. In accordance with Attachment 1 – RFP Terms and Conditions, Offeror acknowledges and understands that any protest, claim, dispute, or action based upon a conflict or issue described herein must be filed no later than the RFP Close Date, and Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described herein if not filed by the RFP Close Date.

IV. SIGNATURE

The undersigned is one of the following:

1. The Offeror, if Offeror is an individual;
2. A partner in the company, if Offeror is a partnership; or
3. An officer or employee of the responding corporation having authority to sign on its behalf, if Offeror is a corporation.

By signing below, the undersigned warrants that the representations made and the information provided in Offeror's proposal are true, correct, and reliable for purposes of evaluation for a potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from contract award and may subject the undersigned, Offeror, or both to suspension or debarment proceedings, as well as other remedies available to the Lead State by law, including termination of any Master Agreement awarded to Offeror.

OFFEROR:

____

Signature **Date**

____

Printed Name

____

Title

____

Email Address

____

Phone Number

Attachment 9
OFFEROR RESPONSE WORKSHEET

This attachment lists the items to which the Lead State requires Offerors to provide a response.

Requirements are identified as mandatory (M), non-mandatory (NM), mandatory scored (MS), and non-mandatory scored (NMS). Refer to Attachment 1 – RFP Terms and Conditions, Section III.E, Identification of Requirements and Attachment 7 – Offeror Proposal Requirements for instructions.

Offeror must provide complete and succinct responses to each item below. **Insert your responses into this worksheet in the "Offeror Response" section for each question or prompt where indicated.**

While supplementary marketing materials are neither requested nor desired, Offeror should provide all information necessary to demonstrate Offeror's ability to meet the requirements of this RFP and the Attachment 2 – Scope of Work.

Section 2 - Narrative Responses will be evaluated and scored in accordance with Attachment 3 – RFP Evaluation Plan.

SUBMIT COMPLETED ATTACHMENT WITH PROPOSAL.

(Rest of page intentionally left blank)

OFFEROR RESPONSE WORKSHEET

Offeror Name:

ENTER COMPANY NAME

SECTION 1 – ADMINISTRATIVE RESPONSES

Question #	Description of Requirement	Offeror Response
Response required with Offeror proposal		
1.1	**Iran Contracting Act (M) –** In accordance with the Iran Contracting Act, does Offeror certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services? RFP Reference: Attachment 7, Section 2.2	*Yes or No only* ☐ Yes ☐ No
1.2	**Iran Contracting Act (M) –** In accordance with the Iran Contracting Act, does Offeror certify it is **not** a financial institution extending $20 million or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of person engaged in investment activities in Iran created by California Department of General Services? RFP Reference: Attachment 7, Section 2.2	*Yes or No only* ☐ Yes ☐ No
1.3	**Iran Contracting Act (M)** – Has Offeror obtained an exemption from the certification requirement under the Iran Contracting Act? If yes, submit documentation demonstrating the exemption approval with the bid response. RFP Reference: Attachment 7, Section 2.2	*Yes or No only* ☐ Yes ☐ No
1.4	**Darfur Contracting Act (M)** - Has the Offeror conducted business outside of the United States in the last three (3) years? RFP Reference: Attachment 7, Section 2.3	*Yes or No only* ☐ Yes ☐ No

Question #	Description of Requirement	Offeror Response
1.5	**California Small Business Preference (NM)** – Is the Offeror a California certified small business or small business/Nonprofit Veteran Services Agencies (SB/NVSA) claiming the small business preference? RFP Reference: Attachment 7, Section 2.13.2 and 2.13.3	*Yes or No only* ☐ Yes ☐ No
1.6	**California Non-Small Business Subcontractor Preference (NM)** – Is the Offeror a non-small business claiming at least 25 percent small business subcontractor preference? RFP Reference: Attachment 7, Section 2.13.4	*Yes or No only* ☐ Yes ☐ No
1.7	**California Target Area Contract Preference Act (TACPA) Preference (NM)** – Is the Offeror claiming a TACPA preference? RFP Reference: Attachment 7, Section 2.13.5	*Yes or No only* ☐ Yes ☐ No
Response may be provided with Offeror proposal or within five (5) working days after notification from the Lead State.		
1.8	**Generative Artificial Intelligence (GenAI) (M) –** Does Offeror intend to provide GenAI as a deliverable to the Lead State or utilize GenAI, including GenAI from third parties, to complete all or a portion of any deliverable that materially impacts: (i) functionality of a Lead State system, (ii) risk to the Lead State, or (iii) Contract performance. RFP Reference: Attachment 7, Section 2.5	*Yes or No only* ☐ Yes ☐ No
1.9	**California Seller's Permit (M) –** Provide Offeror's Seller's Permit number issued by the California Department of Tax and Fee Administration. RFP Reference: Attachment 7, Section 2.7	
1.10	**California Secretary of State (SOS) Certification (M)** – Provide Offeror's SOS certification number. RFP Reference: Attachment 7, Section 2.8	

SECTION 2 – NARRATIVE RESPONSES

2.1 Scope of Work (MS)

Provide a full, detailed description of your company and the products offered related to this RFP. The Offeror shall provide a description of its ability to provide the products, supply chain distribution, stock items, geographic availability, etc., to meet the requirements outlined in Attachment 2 – Scope of Work.

Response should include:

a) A detailed written plan for distribution of the products. The plan must clearly show distribution from the manufacturer to the Purchasing Entity, including all points in between, and the role that you, as the Contractor of record, will play in the distribution. This plan must clearly identify all parties, including any proposed subcontractor(s) involved in the execution of this Master Agreement, as well as their respective responsibilities.

b) How Contractor will address remote locations. This includes locations that require extended transit times, have limited transportation infrastructure, experience seasonal access challenges, or necessitate specialized logistics planning to ensure timely and reliable delivery.

Offeror Response (Limit 3 pages):

2.2 Electronic Catalog Capabilities (MS)

Describe your company's ability to provide an electronic catalog for the Master Agreement, meeting the requirements outlined in Attachment 2 – Scope of Work, Section 4, Electronic Catalog.

Response should include:

a) How Purchasing Entities will be able to access the catalog.

b) Features of search and product comparison functionality.

c) Features of quote-generation and online ordering functionality.

d) How the electronic catalog meets accessibility requirements under the Americans with Disabilities Act and Web Content Accessibility Guidelines to ensure users with disabilities can access and use it.

e) Whether the electronic catalog can be accessed using any device or web browser and identify any known limitations.

f) Whether Purchasing Entities can save favorite items or create order templates for future use or quick reordering.

g) How do you plan and communicate system updates or maintenance periods to ensure minimal impact on users.

h) Explain how you communicate and manage discontinued or replaced items within the electronic catalog.

Offeror Response (Limit 3 pages):

2.3 Pricing Accuracy (MS)

Describe how your company will ensure Purchasing Entities will receive Master Agreement pricing, or promotional pricing, whichever is lower, on the electronic catalog and at Retail Sales Establishments.

Response should include:

a) How promotional pricing is shown on the electronic catalog.

b) How Purchasing Entities can verify MSRP pricing and category discounts applied.

c) How often product information, pricing, and availability are reviewed and updated in the catalog.

d) Describe any audit tools or reports available to track pricing changes over time and verify compliance with Master Agreement pricing.

Offeror Response (Limit 3 pages):

2.4 Retail Sales Establishments (MS)

Describe your company's ability to provide Retail Sales Establishments meeting the requirements outlined in Attachment 2 – Scope of Work, Section 6, Retail Sales Establishments.

Response should include:

a) Description of nationwide Retail Sales Establishments and how your company will provide coverage to all potential Participating Entities.

b) Description of available walk-in and will-call systems.

c) How customer service associates will support walk-in and will-call order systems.

d) What information is provided on sales receipts for walk-in and will-call transactions.

Offeror Response (Limit 3 pages):

2.5 Implementation of the NASPO ValuePoint Master Agreement (MS)

a) Describe your company's experience working with contracting cooperatives.

Offeror Response (Limit 1 page):

b) Describe how you intend to market and encourage adoption and usage of your Master Agreement by Participating Entities and Purchasing Entities.

Offeror Response (Limit 1 page):

c) Describe the staff and other resources that will be allocated to your Master Agreement and the training you, as the contractor, will provide to staff to ensure their familiarity and compliance with Master Agreement terms and pricing.

Offeror Response (Limit 1 page):

d) Describe your approach to negotiation of Participating Addenda. Describe the extent to which you will provide Participating Entities flexibility in incorporating entity-specific language into their Participating Addenda. (*e.g.*, Do you require entities to provide statutory citations for their entity-specific language? Are you able to devote resources to simultaneous negotiation of multiple Participating Addenda?)

Offeror Response (Limit 1 page):

e) Describe how you will ensure summary and detailed sales information is promptly, completely, and accurately reported by you and your Retail Sales Establishments for reporting to NASPO ValuePoint and the Lead State in compliance with the terms of your Master Agreement.

Offeror Response (Limit 1 page):

2.6 California-Certified Firms (M)

Identify any strategies your company utilizes to support California-certified small and disabled veteran enterprise businesses in areas such as hiring practices, supply chain management, subcontracting, etc.

Offeror Response (Limit 1 page):

Request for Proposals for
AUTOMOTIVE PARTS
Issued by the State of California
Solicitation Number 0000037049

ATTACHMENT 10 - COST PROPOSAL

Instructions:

Offerors shall complete this Cost Proposal in accordance with Attachment 7, Section 3, Cost Requirements.

Attachment 10 - Cost Proposal must be submitted as part of the Offeror's proposal as a separate attachment in accordance with RFP Overview, Section IV, Offeror Proposal.

Tab 2 - Enter information in yellow boxes only. Offerors shall enter their Legal Business Name and the percentage discount (in whole numbers) off the Manufacturer's Suggested Retail Price (MSRP) for each of the twenty (20) categories listed. The "Average Discount" will automatically compute once data is entered. Do not alter this workbook in any way, except to enter the required information in the yellow boxes only.

End of Worksheet. Go to next Tab.

Request for Proposals for
AUTOMOTIVE PARTS
Issued by the State of California
Solicitation Number 0000037049

ATTACHMENT 10 - COST PROPOSAL

Instructions:
- Offerors must enter information in yellow boxes only.
- Offerors must enter their Legal Business Name below in Cell B4.
- Offerors must enter the Minimum Percent Discount (%) for each of the twenty (20) categories below.
- Discounts provided must be in whole numbers (e.g., 75%).

Offeror Name:

CATEGORY	DESCRIPTION	MINIMUM PERCENT DISCOUNT (%)
1	AIR CONDITIONING	
2	ALTERNATORS AND STARTERS	
3	BATTERIES	
4	BEARINGS (BALL AND ROLLER)	
5	BELTS AND HOSES	
6	BRAKES	
7	ELECTRICAL AND IGNITION	
8	EMISSIONS, SENSORS, AND EXHAUST	
9	ENGINE AND DRIVE TRAIN	
10	FILTERS (OIL, GAS, AIR AND TRANSMISSION)	
11	GASKETS AND SEALS	
12	HEATING AND COOLING (ENGINE)	
13	LAMPS, LIGHTING, AND MIRRORS	
14	OILS, CHEMICALS, FLUIDS, AND LUBRICANTS	
15	PUMPS (FUEL AND WATER)	
16	SUSPENSION (SHOCKS AND STRUTS) AND STEERING	
17	WIPERS	
18	WINTER ACCESSORIES	
19	GENERAL AUTOMOTIVE PARTS (Aftermarket Automotive Parts not included in Categories 1-18.)	
20	AUTOMOTIVE REPAIR SHOP SUPPLIES, EQUIPMENT, AND TOOLS	
	Average Discount (for evaluation purposes)	**#DIV/0!**

End of Workbook.